Filed to write 5-8 Filed March 21st 1881

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~447~~. 173

VITAL JARROLT, PLAINTIFF IN ERROR,

vs.

THE CITY OF MOBERLY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED JULY 16, 1878.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States in and for the western district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the April term, 1878, thereof, between Vital Jarrolt, plaintiff, against The City of Moberly, defendant, a manifest error hath happened, to the great damage of the said Vital Jarrolt, as by his complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 18th day of April, in the year of our Lord one thousand eight hundred and seventy-eight.

Issued at office in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, dated as aforesaid.

[SEAL.]

H. C. GEISBERG,
Clerk Circuit Court United States,
Western District of Missouri.

Allowed by—

JOHN F. DILLON, *Judge.*

2 *Return to writ.*

UNITED STATES OF AMERICA,
Western District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at the city of Jefferson, this 17th day of June, A. D. 1878.

[SEAL.] H. C. GEISBERG, *Clerk.*

(Indorsed:) No. 891. United States circuit court, western district of Missouri. Vital Jarrolt vs. City of Moberly. Writ of error to the circuit court of the United States for the western district of Missouri. Returned and filed day of , 187 . , clerk.

The United States of America to The City of Moberly, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the

Nos. 13, 14, 15, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, & 30, each for the sum of twenty-five dollars, and due and payable on the first day of November, 1874, making the sum of four hundred and fifty dollars; that the same are still due and unpaid, although payment of same
8 was duly demanded. Wherefore plaintiff asks judg't for the sum of four hundred and fifty dollars and interest.

Plaintiff further states that he is the holder and bearer for value of coupons No. 6, detached from said fifty bonds, fifty in number and each for the sum of twenty-five dollars, due and payable on the first day of May, 1875, making the sum of twelve hundred and fifty dollars; that the same are still due and unpaid, although payment of same has been demanded. Wherefore plaintiff asks judg't for the sum of twelve hundred & fifty dollars and interest.

Pl'ff further states that he is the holder and bearer for value of coupons No. 7, detached from said fifty bonds, fifty in number, and each for the sum of twenty-five dollars, due and payable on the first day of November, 1875, making the sum of twelve hundred and fifty dollars; that the same is still due and unpaid, although payment has been demanded. Wherefore plaintiff asks judg't for the sum of twelve hundred and fifty dollars and interest.

Plaintiff further states that he is the holder and bearer for value of coupons No. 8, detached from said fifty bonds, fifty in number, and each for the sum of twenty-five dollars, due and payable on the first day of May, 1876, making the sum of twelve hundred and fifty dollars; that the same are still due and unpaid, although payment has been demanded. Wherefore plaintiff asks judg't for twelve hundred and fifty dollars and interest.

Plaintiff says, by reason of the causes of action above set forth, def't was indebted to pl'ff—

On the 1st day of November, 1874	$450
" " " " " May, 1875	$1,250
" " " " " Nov., 1875	$1,250
" " " " " May, 1876	1,250

Making the sum of four thousand two hundred dollars, for which am't, with interest, pl'ff asks judg't.

JOHN D. STEVENSON,
Att'y for Pl'ff.

9 And thereupon, on said day, there was issued out of said clerk's office a summons, in words and figures following, to wit:

Summons.

UNITED STATES OF AMERICA,
Western District of Missouri, sct:

In the circuit court of the United States in and for said district.

The President of the United States of America to the marshal of the western district of Missouri, greeting:

You are hereby commanded to summon The City of Moberly, a municipal corporation created and existing under the laws of the State of Missouri, citizen of the State of Missouri and of said district, that it be and appear before the honorable circuit court of the United States in and for the western district of Missouri, on the first day of the next

term thereof to be begun and holden at the city of Jefferson, in said district, on the third Monday, the sixteenth day, of April next, then and there to answer the complaint of Vital Jarrolt, a citizen of the State of Illinois, as set forth in the petition filed in said court on the 29th day of March, A. D. eighteen hundred and seventy-seven. Hereof fail not, and have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 29th day of March, A. D. eighteen hundred and seventy-seven.

Issued at office in the city of Jefferson, in said district, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] H. C. GEISBERG,
Clerk of said Court.

Upon said summons the marshal of the United States for said district made the following return, to wit:

10 *Mar. ret.*

I hereby appoint Sam'l O. Tenny special deputy to execute this writ.
WM. M. SMITH,
U. S. Marshal.

UNITED STATES OF AMERICA,
Western District of Missouri, set:

I do hereby certify that I executed this writ by delivering a true copy of the same, together with a copy of the petition filed in this cause (he being first served), to J. C. Nickerson, mayor, and a copy of the within summons to Wm. Oak, clerk of the board of common council, and also copies of said writ to Wm. A. Rockwell, W. T. McCann, Wm. Seelen, John Campbell, Paul Roach, & James Scott, members of the board of common council, and also a copy to Wm. Lee McCart, councilman at large, all members of the city government of the city of Moberly, Randolph County, in the western district of Missouri, on the 30th day of March, 1877.

WM. M. SMITH,
U. S. Marshal, Western District of Missouri,
By SAM'L O. TENNY,
Sp'l Deputy.

Sworn to and subscribed before me this 31st day of March, 1877.
[SEAL.] H. C. NITCHY,
Notary Public.

And afterwards, at the regular stated term of the said circuit court of the United States in and for the western district of Missouri, begun and held at the city of Jefferson, in said district, on the third Monday, being the 16th day, of April, A. D. 1877, the following proceedings were had in this case on the 17th day of April, in said last-mentioned year, to wit:

Demurrer filed.

VITAL JARROLT *vs.* CITY OF MOBERLY. } 891.

11 This day comes the defendant, by J. O. Broadhead, esqr., its attorney, and files demurrer to the plaintiff's petition.

Which demurrer so filed as aforesaid is in words and figures following, to wit:

Demurrer.

United States circuit court, western district of Missouri.

VITAL JARROLT, PL'FF,
vs.
THE CITY OF MOBERLY, DEF'T.

Now, at this day, comes the defendant in the above-entitled cause, and says that the petition in said cause is not sufficient in law to entitle the said plaintiff to recover in said cause, and for cause of demurrer assigns the following, to wit:

1. From the facts set out in said petition it appears that the city council of the city of Moberly had no authority in law to issue the bonds set forth and referred to in said petition, because the pretended act of the legislature under the authority of which said bonds were issued is unconstitutional.
2. Because it appears that the legislature of Missouri exceeded its authority in the passage of said law.
3. Because the said petition does not state facts sufficient to constitute a cause of action.
4. Because said petition is in other respects informal and insufficient.

JAS. O. BROADHEAD,
Att'y for Def't.

And afterwards, at said last-mentioned regular stated term of said circuit court, the following further proceedings were had in this case on the 18th day of April, A. D. 1877, to wit:

Demurrer argued, &c.

VITAL JARROLT
vs. 891.
CITY OF MOBERLY.

12 This day *the* come the parties, by their attorneys, the plaintiff, by John D. Stevenson, esqr., and the defendant, by J. O. Broadhead, esqr., and the demurrer to the petition heretofore filed is thereupon argued by counsel and submitted to the court.

And afterwards, at said last mentioned regular stated term of said circuit court, the following further proceedings were had in this case on the 19th day of April, A. D. 1877, to wit:

Demurrer withdrawn.—Leave to file answer.

VITAL JARROLT
vs. 891.
CITY OF MOBERLY.

This day comes the defendant, by J. O. Broadhead, esq., and withdraws demurrer and leave is granted to file answer on stipulation to be filed.

And afterwards, at the regular stated term of said circuit court begun and held on the third Monday of November, A. D. 1877, at the place aforesaid, the following further proceedings were had in this case on the 20th day of November, 1877, to wit:

Demurrer refiled.

VITAL JARROLT
vs. } 891.
CITY OF MOBERLY.

This day comes the defendant, by John H. Overall, esq., and refiles its demurrer.

(Said demurrer will be found on page 11 of this transcript.)

And afterwards, at said last-mentioned regular stated term of said circuit court, the following further proceedings were had in this case on the 21st day of November, A. D. 1877, to wit:

Submitted upon demurrer.

VITAL JARROLT
vs. } 891.
CITY OF MOBERLY.

13 This day come the parties, by their attorneys, the plaintiff, by John D. Stevenson, esq., and the defendant, by John H. Overall, esq., and thereupon this cause is submitted to the court upon the demurrer.

And afterwards, at the regular stated term of said circuit court begun and held on the third Monday of April, A. D. 1878, at the place aforesaid, the following further proceedings were had in this case on the 17th day of April, A. D. 1878, to wit:

Judgment.

VITAL JARROLT
vs. } 891.
CITY OF MOBERLY.

This cause having been heretofore submitted to the court upon the demurrer of defendant to plaintiff's petition, and the court being now advised concerning the same it is considered and adjudged that the demurrer be sustained, and the plaintiff electing to stand by his petition, it is considered by the court that the defendant, The City of Moberly, in the State of Missouri, go hence, without day, and recover from the plaintiff, Vital Jarrolt, its costs in this behalf laid out and expended and have execution therefor.

And afterwards, at said last-mentioned regular stated term of said circuit court, the following further proceedings were had in this case on said day, to wit:

Certificate of division.

VITAL JARROLT
vs.
CITY OF MOBERLY. } 891.

This day the following certificate of division in opinion of the court is filed and ordered to be made a part of the record, to wit:

At a circuit court of the United States begun and held at the city of Jefferson, for the western district of Missouri, on Monday the 15th day of April, 1878.

14 Present, the Hon. John F. Dillon, circuit judge, and the Hon. Arnold Krekel, district judge.

VITAL JARROLT, PLAINTIFF,
vs.
CITY OF MOBERLY, DEFENDANT. } No. 891.

APRIL 17, 1878.

This cause was heard on the demurrer of the defendant to the plaintiff's petition; said demurrer was sustained by the court, and the plaintiff electing to stand by his cause of action as stated in this petition, and final judgment having been entered on the said demurrer for the defendant, it is now certified as provided by law, by the said judges, that their opinions were opposed upon the following points arising upon the said demurrer, viz:

First. Whether the act of March [illegible]th, 1870, entitled "An act to authorize cities and towns to purchase lands and donate, lease, or sell same to railroad companies," to wit, the act recited in the bonds, is in conflict with section fourteen of article eleven of constitution of the State of Missouri, of anno Domini 1865.

Second. Whether the plaintiff's petition states a valid and sufficient cause of action against the defendant.

And the said points upon which the opinions of the judges were opposed have been stated under the direction of the judges during the term and are here certified to the Supreme Court, and this certificate ordered to be entered of record.

(Signed) JOHN F. DILLON.
(Signed) ARNOLD KREKEL.

And afterwards, at said last-mentioned regular stated term of said circuit court, the following further proceedings were had in this case on the 20th day of April, A. D. 1878, to wit:

15 *Writ of error allowed; citation signed; bond app'd.*

VITAL JARROLT
vs.
CITY OF MOBERLY. } 891.

This day comes the plaintiff, by John D. Stevenson, esq., and presents to the court a bond for writ of error, a writ of error to reverse the judgment in this cause rendered, and a citation to the defendant; and thereupon said bond is approved, said writ allowed, and said citation signed by the court.

Which bond so filed as aforesaid is in words and figures following, to wit:

Bond.

Know all men by these presents that we, Peter L. Foy, as principal, and Henry L. Clark, as surety, are held and firmly bound unto the City of Moberly in the full and just sum of five hundred dollars, to be paid to the said City of Moberly, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals and dated this 19th day of April, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas lately at the April term, A. D. 1878, of the circuit court of the United States for the western district of Missouri, in a suit depending in said court between Vital Jarrolt, plaintiff, and the City of Moberly, defendant, judgment was rendered against the said Vital Jarrolt, and the said Vital Jarrolt having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said City of Moberly citing and admonishing it to be and appear at a Supreme Court of the United States to be held at Washington, D. C., on the second Monday of October next:

Now the condition of the above obligation is such, that if the
16 said Vital Jarrolt shall prosecute said writ to effect and answer all damages and costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

PETER L. FOY. [L. S.]
HENRY L. CLARK. [L. S.]

Sealed and delivered in presence of—
ED. C. VERNON.
E. C. NEWKIRK.
Approved by—

JOHN F. DILLON,
Judge.

The opinion delivered by Judge Dillon is in words and figures following, to wit:

Opinion by Dillon, J.

U. S. circuit court, western district of Missouri, April term, 1878.

VITAL JARROLT
vs.
CITY OF MOBERLY.

This is an action upon coupons from bonds issued by the defendant. The bonds, styled "Moberly Machine Shop Bonds," are dated May 1, 1872, and contain the recitals hereinafter appearing. They were issued under the act of March 18th, 1870 (Laws 1870, p. 163), entitled "An act to authorize cities and towns to purchase lands, and to donate, lease, or sell the same to railroad companies," and the bonds recite this act as the authority for their issue; and also, that at the election 228 votes were cast in favor of the proposition, and only one vote was cast against it.

The defendant demurred to the petition, on the ground that the act

of March 18, 1870, under which the bonds were issued, was unconstitutional.

John D. Stevenson for the plaintiff, Broadhead and Overall for the defendant.

DILLON, circuit judge:

This case presents a new question in respect to municipal bonds.

The bonds recite that they were issued under the act of March 18, 1870 (Laws 1870, p. 163), in pursuance of an election held March 26th, 1872, which was prior to the act of March 29, 1872 (Laws 1872, p. 176), amending the first-mentioned act. This last-named act of March 29th, 1872, has therefore no application to the bonds now in suit,
17 and is immaterial except in so far as it may be regarded as a legislative confession that the original act authorizing a majority of the qualified voters to create such a debt as the act contemplated was in conflict with the constitutional provision requiring the assent of two-thirds of the qualified voters (Const. of 1865, Art. XI, sec. 14).

The bonds in question recite that they are issued in pursuance of an election held in said town on the 26th day of March, 1872, to decide whether the said town should purchase and donate to the St. Louis K. C. and N. Railway Company 200 acres of land for machine-shop purposes, &c., in accordance with the said act of March 18, 1870.

The purchasers of the bonds are, of course, charged with notice of the facts therein stated. They knew, therefore, the date of the election, the act under which, and the purpose for which the bonds were issued.

The demurrer presents two questions:

1. The first question is, whether the particular purpose for which these bonds were issued, viz, for "the purpose of assisting and inducing the railroad company to locate and build machine shops upon the land" purchased by the city and donated to the company, is a public purpose in such a sense as to justify compulsory taxation to pay the debt thus incurred.

If such aid had been given to an individual, or to a private company, proposing to erect shops for manufacturing or repairing machinery, the act would fall within the principles declared and established by the Supreme Court of the United States in the Iola and Topeka cases, and would be void (Loan Asso. vs. Topeka, 20 Wall., 655; S. C., Dillon, 353; San. Ass. vs. Topeka, 3 Dillon, 376). The Supreme Court there hold that a statute which authorizes the issue of bonds, to be paid by taxation, to aid individuals or private corporations to establish or
18 carry on manufacturing enterprises, is void because the taxation is not for a public purpose, although in a remote or collateral way the local public may be benefited thereby. (Same principle—Lowell vs. Boston, 111 Mass., 454; Allen vs. Jay, 60 Maine, 124.)

But as it is settled law in Missouri, that aid of this character can be constitutionally given to railroad companies, it would seem to follow that if machine shops are an integral or essential part of a railroad, or necessary for its convenient use and operation (as on this demurrer we ought to assume them to be), then the act of March 18, 1870, under which the bonds in question were issued, is not void within the doctrine of the Iola and Topeka cases.

The next question is whether the act of March 18, 1870, is in conflict with sec. 14, art. xi, of the State constitution of 1865. That section

provides that "the general assembly shall not authorize any county, city, or town to become a stockholder in, or to loan its credit to, any company, association, or corporation unless two-thirds of the qualified voters of such county, city, or town, at a regular or special election to be held therein, shall assent thereto."

The act of March 18th, 1870, under which these bonds were issued, authorized the municipalities therein mentioned to purchase lands and donate, lease, or sell the same to a railroad company as a means of inducing it to locate and build its machine shops on the lands and of assisting it to do so, and for this purpose to issue its bonds to be paid by taxation on the sanction of a majority vote. In the present suit the bonds recite that the lands were to be purchased by the city, and paid for in bonds and donated to the railroad company, and this—the case of a purchase on credit and a donation—is the precise case now presented for judgment.

If this is a "loan of credit" of the town to the railroad company, the bonds are void, because the act which authorizes this to be done on a majority vote is in conflict with the constitution, which, in such a case, expressly requires the sanction of a two-thirds vote.

What, then, is a "loan of municipal credit" to a railroad company within the meaning of this provision of the constitution?

The provision of the constitution confessedly had its origin in the abuses and frauds which had prior to 1865 been seen to grow out of the unlimited power of the legislature over the subject. Literally, scores of charters and acts had been passed, authorizing county justices and municipal bodies to subscribe for stock in railways, and to issue bonds without limit as to amount, and without the sanction of the people to be affected.

The plain purpose of the constitution was to prevent or check this in the future by the provision that municipalities shall not be permitted to incur debts in aid of railways to bepaid by taxation unless two-thirds of the qualified voters of the municipality should formally assent thereto. The constitution enumerates cities, counties, and towns (the only incorporated public or municipal bodies known to the laws of Missouri), and extended the prohibition to all of them; and it has been held to extend to townships, although not named in the constitutional provision (Nashman vs. Bates Co., 92 U. S., 2 Otto, 569; Jordan vs. Cass Co., 3 Dillon, 185).

As counties, cities, and towns had, and could have, no considerable funds applicable to such purposes, unless procured on credit, the convention doubtless supposed that a provision that they should not become stockholders in any corporation or loan their credit to any corporation without a two-thirds vote would effectually accomplish the purpose in view, viz. to prevent public debts from being created for the benefit of railway corporations without the previous approval of two-thirds of the voters on whom the consequent taxation would fall.

Constitutional provisions are usually expressed in general terms, and do not descend to the detail often necessary in legislative enactments, and they are intended to secure some essential right, or to prevent wrongs or injuries or abuses. Such provisions are protective and remedial, and are not to be construed with the strictness of penal statutes, but with reference to the public ends sought to be protected or secured. The mischief felt by the constitutional convention of 1865 was that in the absence of constitutional restriction the legislature had conferred upon public and municipal officers unguarded powers of dangerous ex-

tent, the sting of the evil being the creation of burdensome debts to be paid by taxation. The remedy applied was that for the future municipalities should not be allowed to become stockholders in private corporations (which involves the necessity of paying for the stock), or to loan their credit to such corporations (which involves the creating of a debt for the benefit of such corporations), and both involve the necessity of taxation, unless two-thirds of the qualified voters should assent thereto. If the act of March 18th, 1870, which only requires the assent of a majority, is valid, it would have been equally valid if the like power had been conferred without requiring any vote whatever. So that the real question is whether what was done by the defendant city, as recited in the bonds, was the loan of its credit to the railway corporation within the meaning of the constitutional provision in this regard.

If the bonds in suit had been executed and delivered directly to the railroad company as the consideration for its agreement to locate its machine shops within the town, then, on the only assumption on
21 which the bonds can be sustained, viz, that such shops are part of the railroad, or necessary for its use, would not the execution and delivery of such bonds to the railway company be the loaning by the town of its credit to the company?

It is not different in essence, and particularly in view of the object of the constitution, viz, to prevent taxing the people without the required consent, that the town sells its own bonds and gives to the company the proceeds instead of the bonds themselves.

The bonds in question, if valid, create a debt against the defendant city for the benefit of a railroad corporation, and are thus within the mischief or evil which the constitution aimed to remedy. Why, then, should not the constitutional provision be held applicable to these bonds? It cannot be maintained on solid grounds that a barrier of a two-thirds vote, weak and ineffectual as it has proved to be, can be evaded by a mere change of the form of the aid—that is, by giving the aid in the shape of a donation of the proceeds of credit instead of a subscription for stock, or instead of giving the bonds directly to the company which the municipality desires to assist.

In my judgment a municipality "loans its credit" to a railway company, within the meaning of the constitutional provision here involved, whenever it issues its bonds to assist such company in building its road or any part of it, or to assist it in erecting shops which are necessary or useful in operating its road. (Taylor vs. Com. of Ross Co., 23 Ohio St. 22, 76, 79; Penn. R. R. Co. vs. Philadelphia, 47 Pa. St., 189, 194.)

This view has a direct and strong support in the judgment of the supreme court of the State in the Phelps County case, construing this constitutional provision. (State vs. Curators of State University, 57
22 Mo., 178.) It was there held that the legislature could not authorize a county to issue its bonds to secure the establishment of a school of mines within its limits, unless the proposition was assented to by a vote of two-thirds of the voters.

Napton, J., delivering the opinion of the court, inquires: "What was the object of the (constitutional) restrictions on county courts, city and town municipalities?" And he answers, "The object was plainly to prevent them from taxing the people without their consent."

The subsequent case in relation to Forest Park (County Court vs. Griswold, 58 Mo., 175) is not considered by the supreme court as inconsistent with the Phelps County case above referred to.

It is my judgment that the act under which the bonds in question were issued is in conflict with the constitution, and hence that the bonds

are void into whosesoever hands they may be. I should have so declared without much hesitation if the question had arisen on an application to enjoin the issue of the bonds. I feel the increased difficulty of so holding in a case where the bonds have been issued upon a vote almost unanimous and afterwards negotiated for value, and where purchasers in actual good faith will be the sufferers if my view is sustained. I desire to add that I am not insensible to the force of the argument so fully presented by Judge Krekel in support of the opposite conclusion, and I cannot but feel more than the usual distrust of my own judgment when it differs from his on a question as of local law, and particularly on a question as to the meaning of a provision of the constitution of the State, which he, as the president of the convention, assisted to frame.

Fortunately the result of this difference of opinion is that it
23 will enable the judgment of this court to go for revision to the Supreme Court, which could not otherwise be done in consequence of the amount involved not being sufficient.

The demurrer will be sustained and judgment will be entered for defendant. If desired we will join in a certificate of division to the Supreme Court.

Judgment accordingly.

Opinion by Krekel, J.

Dissenting opinion by Judge Krekel.

Plaintiff, Jarrolt, brings this action against defendant, the City of Moberly, to recover judgment on interest-coupons detached from what are called "Moberly machine-shop bonds." The petition sets out a copy of the bonds, showing that the City of Moberly acknowledges itself indebted to W. F. Burrows or bearer in the sum of five hundred dollars, in current funds, at the Bank of America, in the city of New York, ten years after date, with interest at ten per cent., payable annually on presentation of coupons, with option on part of the inhabitants of the town of Moberly to pay the bonds after three years, and payable only by a special tax.

The bonds on their face recite that they were issued in pursuance of an election held on the 6th day of March, 1872, to decide whether said town should purchase and donate to the St. Louis, Kansas City and Northern Railroad Company two hundred acres of land for machine-shop purposes, the result of said election being 228 votes for and one vote against the purchase and donation, and in pursuance to the order of the board of trustees, made on the 18th day of April, 1872, which order was made in accordance with an act of the general assembly of the State of Missouri, entitled "An act authorizing cities and towns to purchase land and to donate, lease, or sell the same to railroad companies," approved March 18, 1870. The interest coupons are in the usual form.

24 The petition is demurred to, setting out for causes that from the petition it appears that the city council of Moberly had no authority in law to issue the bonds, the pretended act of the legislature under authority of which the bonds issued being unconstitutional; and because it appears that the legislature of Missouri exceeded its authority in the passage of said law.

The act, the constitutionality of which is thus brought in question, provides:

"SECTION 1ST. It shall be lawful for the council of any city or the

trustees of any incorporated town to purchase lands, and to donate, lease, or sell the same to any railroad company upon such terms and conditions as such board may deem proper for the use of assisting and inducing such railroad company to locate and build machine shops or other improvements upon such lands, and for such purpose to levy taxes upon the taxable property of such city or town, and to borrow money, and to issue the bonds of such city or town for such purpose: Provided a majority of the qualified voters of such town or city at a regular or special election to be held therein shall assent to such purchase and donation.

"SECTION 2ND. At such election the poll-books shall be opened and the ballots headed and styled 'For the purchase and donation' and 'Against the purchase and donation,' and if a majority of the votes cast shall be 'For the purchase and donation,' the proposition shall be deemed to be carried, and in that case the chairman of the board of trustees of any town or the mayor of any town or city is hereby authorized to receive and convey on behalf of said town or city said land as aforesaid."

The third section provides for the giving of notice "for at least two weeks before the terms of the contract to be so submitted as agreed upon between said railroad company and such common council
25 or board of trustees."

It has been agreed that for the purpose of this demurrer all the requirements of the law had been complied with before the issuing of the bonds.

The constitutional provision, in violation of which the law quoted is claimed to have been passed, is found in paragraph 14, article 9 of the constitution of Missouri of 1865, and is in these words:

"SECTION 14. The general assembly shall not authorize any county, city, or town to become a stockholder in, or to loan its credit to any company, association, or corporation unless two-thirds of the qualified voters of such county, city, or town at a regular or special election to be held therein shall assent thereto."

This constitutional provision came up for consideration in the supreme court of Missouri (State of Missouri vs. Curators of the State University, 57 Mo., 178), in which the legality of certain bonds issued by the county of Phelps to obtain the location of the school of mines was contested, and it was held that the provision cited applied, and the issuing of the bonds enjoined, because no vote had been taken. Napton, judge, closes his opinion as follows:

"It will be observed that this is a case in which the issue of bonds not authorized by the constitution is proposed to be arrested. When the proposed issue is not sanctioned by the requisite vote we think it a suitable time to prevent the issue. After such bonds have been put upon the market and purchasers have invested in them, the question of their validity depends upon essentially different principles."

In the case before the court we have a vote taken, the bonds have been put upon the market, and plaintiff is a purchaser of them for value. With these important differences between the cases, I feel free to consider the case before the court without that embarrassment which a difference of opinion with a
26 court of such high standing passing upon its own constitution would create. The constitutional provision under consideration has a legislative history commencing with the act of 27th January, 1837, incorporating the Louisiana and Columbia Railroad. By the 16th section of that act county courts were authorized to subscribe stock to the com-

pany and issue the notes of the county for such subscriptions, to be signed by all the justices and attested by the clerk, payable at such time and places as might be agreed on. After such subscription the justices had the right to vote the stock in elections of the company. In the charters afterwards granted to railroad from time to time by the legislature this power to subscribe was embodied. No general railroad law was passed until 1853. The act of February 24th of that year, in its 29th section granted to the county court of any county and the city council of any city the power to subscribe to the capital stock of any railroad company organized under the act; provided, "that the county court or city council subscribing or proposing to subscribe to such capital stock may, for information, cause an election to be held to ascertain the sense of the taxpayers of such county or such city as to such subscription, and as to whether the same shall be paid by issues of county or city bonds." The act authorizes the collection of taxes to pay subscriptions and the interest on bonds which may be issued.

These provisions with the body of the law passed into the revision of the Missouri statutes of 1855. In the Platte County case (42 Mo., page 171), the supreme court of Missouri decided that this word "may" was obligatory, and must be read as "shall," holding bonds issued without submission void. The legislature soon after passed an amendatory act by which the word "shall" is substituted for "may."

27 The only constitutional provisions regarding internal improvements up to 1865 are found in the constitution of 1825, adopted soon after the admission of the State, and are as follows:

"ARTICLE 7. Internal improvements shall forever be encouraged by the government of this State; and it shall be the duty of the general assembly, as soon as may be, to make provision by law for ascertaining the most proper objects of improvement in relation both to roads and navigable waters; and it shall be their duty to provide by law for a systematic and economical application of the funds appropriated to those objects."

In 1846 a convention framed a constitution which, on submission to the people for ratification, was rejected. This instrument made no mention of internal improvements.

The general corporation act of 1855, regarding the building of plank and macadamized roads, in its 34th section authorized county courts to subscribe stock to the extent of one-half of the cost of constructing such roads. In no Missouri law or charter not pertaining to rail, plank, or macadamized roads is any authority found authorizing municipalities to subscribe stock with or without submission.

The laws authorizing county courts to subscribe stock in the improvements mentioned remained dormant until the building of railroads about the year of 1850 actually begun. The provisions were soon made available by the companies needing funds for there purposes. Desiring railroads, the people quietly stood by and acquiesced in the exercise of the power by the county courts in subscribing stock. The legislative mind first perceived the danger; the requirement of submission in the acts of 1853 and 1855, the change of "may" into "shall" in 1860, the provision of the constitution of 1865, requiring a two-third vote, followed. These provisions undertook to keep pace with the rising railroad mania in Missouri. Congress had made land grants, the State had aided

28 certain railroads liberally, reserving for its security liens on the roads aided, which liens the companies interested sought to remove or subordinate to others.

This was the condition of things in Missouri when the convention of

1865 framed the provision in violation of which the act under which "the Moberly machine-shop bonds" issued was passed. Let us now examine the provision itself and seek from its language and import to ascertain whether applicable to the act claimed to be unconstitutional and void. The act by its terms seeks to enable cities and towns to purchase lands and donate, lease, or sell them to railroad companies for the purpose of inducing them to build machine-shops or other improvements upon such lands, requiring a majority vote for sanction. The language of the constitution is, "The general assembly shall not authorize any county, city, or town to become a stockholder in or loan its credit to any company, association, or corporation unless two-thirds of the qualified voters of such county, city, or town at a regular or special election to be held therein shall assent thereto" Did the city of Moberly by purchase of lands and donating them to the railroad company become a stockholder in such company or loan its credit to it? A stockholder in a railroad company may be said to be one who is interested in the funds of the company and who assumes the liabilities of a stockholder. The city of Moberly, by virtue of its donation, certainly did not become interested in the funds of the company, nor did it assume any liability of the company, hence did not partake of the character of a stockholder in any way. It cannot by any possibility be brought within the prohibitory language of the constitution, "shall not become a stockholder in any company."

Did it loan its credit to the railroad company? By making a
29 donation it certainly did not lo[illegible] its credit. But it is said that money was obtained on the bonds in order to make the purchase of the land. Can this fairly be said to be a loan of credit to the company? I think not.

Again, it is said that the constitutional provision is directed against the mischief, and that this case falls within it, and here is the real point in issue, what was, in the light of the legislation of Missouri and the condition of the State, the mischief at which the constitution aimed? Looking at the legislative history and the attending circumstances, the conclusion is that the improvident employment of community credit in railroad enterprises in which they could have no other than a common interest and could exercise, if any, but a very limited control.

The Phelps County case (57 Missouri, 178) and the St. Louis County court case (58 Missouri, 175) may be said, so far as the case under consideration is concerned, to fairly neutralize each other: the first with a leaning adverse to the view here taken, the latter favorable to it.

The constitutional provision under consideration is found in connection with, and preceded by, a prohibition regarding the State as follows: "The credit of the State shall not be given or loaned in aid of any association or corporation; nor shall the State hereafter become a stockholder in any corporation or association." The credit of the State had before that time been given or loaned to various railroads, and the State was, in fact, at the time, a stockholder in a bank, both of which connections had proven unprofitable, and against them the constitutional provision regarding the State was directed. Following this constitutional provision is found the one in reference to counties, cities, and towns, identical in language, adding the requirement of a two third vote under which they might act in reference to the object named; next comes
30 the provision denying the legislature power to release the liens which the State had reserved on the railroads when providing for the loan of its credit to them, so that the loan of credit and becoming stockholders, both as affecting the State as well as local communities, w

before the mind of the convention. No other matters, except those regarding internal improvements in the larger and extended sense, seems to have been thought of and considered. If the purchasing of property and the donation thereof for the purpose of inducing the location of machine shops, thereby securing a local benefit, had been intended to be prohibited, the word "donation" could easily have been added, as in the constitution of Illinois, which, with this exception, is identical regarding the subject-matter. How the legislative mind of Missouri had run on this subject up to 1865, we have seen from what has been stated. How it has since run, the amendment of the act of 1870, requiring a majority only, and its change in 1872, making two-thirds the vote required, and the constitution of 1875, altogether prohibitory, would indicate. This prohibitory clause is as follows: Section 6, article 9. No county, township, city, or other municipality shall hereafter become a subscriber to the capital stock of any railroad or other corporation or association, or make appropriation or donation or loan its credit in aid, &c. Thus by apt words appropriations or donations are prohibited.

The conclusion reached is that the law under which "the Moberly machine-shop bonds" were issued does not conflict with the constitution of 1865 and is a valid act; that the prohibitions of the constitution were not directed against the purchase and donation of property for the purpose mentioned in the act. This being so, the legislature had the power to authorize the city of Moberly to issue its bonds on a majority vote.

31 Another objection to the validity of the "machine-shop bonds" is that they were not issued for a public purpose. In the Fort Scott case (92nd vol. supreme court, 503), bonds for similar improvements were held valid; the case of Burlington vs. Beasly (94 Supreme Court, 429) seems to extend and enlarge municipal power; neither conflict with the Topeka case, in which bonds were held void because issued to a private firm carrying on its own and exclusively private business. As remarked in one of the decisions of the Supreme Court of the United States, nearly all the States have so legislated regarding railroads as to make them public corporations in the essential particulars effecting the interest of the community. State and federal courts have followed in the wake legislation has marked out. Machine-shops are a legitimate and necessary part of a railroad and partake with it of its public character; though they may be locally aided and established, this does not infringe upon or destroy their public character. In parenthesis I may remark that this case presents in some aspects curious features as to legislative and judicial interpretations. The legislature passed the act of 1870, requiring a majority vote in case of donation; then amended it in 1872, requiring a two-third vote. The bonds in question upon their face recite that 228 votes were cast for, and only 1 against the proposition, thus showing more than a full compliance with the act of 1870 and of 1872, as well as with the constitutional provision requiring a two-third vote. To declare the law under which the bonds issued unconstitutional makes the bonds void, notwithstanding the recital of facts on the face of the bonds that more than the two-thirds required had voted for the issue.

32 Thus the spirit of the law is crushed in the form and the law made to favor dishonesty rather than honesty. When such is the condition of things, I prefer resolving doubts in favor of the constitutionality of the act giving force to the law enacted by the legislature.

On the whole, I am of opinion the demurrer to the declaration should be overruled.

Stevenson for plaintiff.
Broadhead and Overall for def't.

33 UNITED STATES OF AMERICA,
Western District of Missouri, sct:

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said district, do hereby certify that the foregoing writing is a true transcript of the record and proceedings in case No. 891 of Vital Jarrolt, plaintiff, against The City of Moberly, State of Missouri, defendant, as fully as the same remains of record and on file in my office.

Witness my hand as clerk and the seal of said court. Done at office, in the city of Jefferson, this seventeenth day of June, 1878.

[SEAL.] H. C. GEISBERG,
Clerk.

(Indorsed:) Case No. 891. U. S. circuit court, western district of Missouri. Vital Jarrolt vs. The City of Moberly. Duly certified transcript of the record and proceedings in the above-entitled cause.

(Indorsement on cover:) No. 447. Vital Jarrolt, plaintiff in error, vs. The City of Moberly. W. Missouri C. C. U. S. Filed 16th July, 1878.

FILED
DEC 22 1880
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

No. 173.

VITAL JARROLT, PLAINTIFF IN ERROR,

vs.

THE CITY OF MOBERLY, DEFENDANT IN ERROR.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

JOHN D. STEVENSON,
For Plaintiff in Error.

Judd & Detweiler, Printers.

Supreme Court of the United States.

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VITAL JARROLT, PLAINTIFF IN ERROR,

vs.

THE CITY OF MOBERLY, DEFENDANT IN ERROR.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT OF CASE.

The plaintiff in error brought his suit in the circuit court of the United States for the Western District of Missouri at the April term, 1877, upon coupons detached from bonds issued by the City of Moberly, defendant in error. The petition set out a copy of the bond and coupon sued on, (Printed Record, page 3,) the bond on its face reciting the authority for its issue. The petition averred payment of interest for several years; that the coupons sued on were due and unpaid, and prays judgment for amount of coupons exhibited, and interest. To the petition defendant in error demurred, the first ground of the demurrer alone being insisted upon, as follows: "First, from the facts set out in said petition it appears that the city council of the city of Moberly had no authority in law to issue the bonds set

forth and referred to in said petition, because the pretended act of the legislature under the authority of which said bonds were issued is *unconstitutional.*" The demurrer was sustained, and judgment entered for defendant. The judges being opposed in opinions, certified their division of opinion to this court upon following points, (Printed Record, page 8:) First, "whether the act of March 18, 1870, entitled 'An act to authorize cities and towns to purchase lands and donate, lease, or sell same to railroad companies,' to wit: the act recited in the bonds is in conflict with section fourteen of article eleven of the constitution of the State of Missouri, of Anno Domini, 1865;" second, "whether the plaintiff's petition states a valid and sufficient cause of action against the defendant."

The separate opinions of the judges are found in Printed Record, page 9, and following. The plaintiff below brings the case to this court by writ of error.

Assignment of Error.

The court below erred in sustaining the demurrer.

The court erred in the law of the case.

The court erred in rendering judgment for defendant.

The judgment should have been for plaintiff.

BRIEF OF PLAINTIFF IN ERROR.

The several acts of the General Assembly of the State of Missouri bearing upon this case are as follows:

AN ACT to authorize cities and towns to purchase lands, and to donate, lease or sell same to railroad companies.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. It shall be lawful for the council of any city or the trustees of any incorporated town *to purchase lands*, and to donate, lease or sell the same to any railroad company,

upon such terms and conditions as such board may deem proper, for the purpose of assisting and inducing such railroad company to locate and build machine shops or other improvements upon such lands, and for such purpose to levy taxes upon the taxable property of such city or town, and to borrow money, *and to issue the bonds of such city or town for such purpose:* Provided, *a majority of the qualified voters of such town or city*, at a regular or special election to be held therein, shall assent to such purchase or donation.

SEC. 2. At such election the poll books shall be opened, and the ballots headed and styled, "For the purchase and donation" and "Against the purchase and donation;" and if a majority of the votes cast shall be "For the purchase and donation," the proposition shall be deemed to be carried, and in that case the chairman of the board of trustees of any town, or the mayor of any town or city, is hereby authorized to receive and convey, on behalf of said town or city, said land as aforesaid.

SEC. 3. Before any vote shall be taken under the provisions of this act, it shall be the duty of the common council or the board of trustees of any incorporated town or village to cause to be published in some newspaper published in said town or village, if there be one, and, if not, then in some newspaper published in the county in which such town or village is situated, for at least two weeks before the terms of the contract to be submitted as agreed upon between said railroad company and such council or board of trustees.

SEC. 4. This act shall take effect and be in form from its passage.

Approved March 18, 1870.

An act to amend section one of "An act to authorize cities and towns to purchase land, and to donate, lease or sell the same to railroad companies. Approved March 18, 1870."

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION. 1. Section one of said act is hereby amended to read as follows: It shall be lawful for the council of any

city, or the trustees of any incorporated town to purchase land, and to donate, lease or sell the same to any railroad company, *and to contract for a period of time not exceeding twenty years with such railroad company for the payment of all or any part of the taxes which may at any time be levied by the authorities of such town or city, and for such town or city purposes only, upon property of such railroad company, and upon such terms and conditions as such board of said city or town may deem proper, for the purpose of assisting and inducing such railroad company to locate and build machine, work or other shops,* or other improvements upon such land for the purpose of such purchase, to levy taxes upon the taxable property of such city or town, and to borrow money and issue the bonds of such city or town for such purpose: *Provided, that two thirds* of the qualified voters of such town or city, at a regular or special election to be held therein, shall assent to such purchase or donation.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved March 29, 1872.

An act to protect counties, cities and incorporated towns from combinations between railroad companies, county courts, city councils of cities and boards of trustees of incorporated towns.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. No county court of any county, city council of any city, nor any board of trustees of any incorporated town, shall *hereafter have the right* to donate, take or subscribe stock for such county, city or incorporated town, in, *or loan the credit thereof to* any railroad company, or other company, corporation or association, unless authorized to do so by a vote of two thirds of the qualified voters of such county, city or incorporated town. And any justice of a county court, member of a city council, or member of a board of trustees of any incorporated town, who shall hereafter vote to donate, take, or subscribe stock for such county, city or incorporated town in *or loan the credit thereof* to any railroad company, or other company, corporation or

association, unless authorized to do so by a vote of two thirds of the qualified voters of such county, city or incorporated town shall be adjudged guilty of a *felony*, and on conviction thereof shall be punished by imprisonment in the penitentiary for not less than two years.

SEC. 2. All *acts and parts of acts inconsistent with this act are hereby repealed.*

SEC. 3. This act to take affect and be in force from and after its passage.

Approved February 16, 1872.

ART. XI, SEC. 14.

Constitution of Missouri, adopted 1865.

SECTION 14. "The General Assembly shall not authorize any county, city or town to become a stockholder, or to loan its credit to any company, association or corporation unless two thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall assent thereto."

The bonds upon which a recovery was sought in this case were issued by the City of Moberly on the 1st day of May, 1872.

The authority to make the bonds is necessarily found in the legislation here quoted, constituting as it does the sole legislation of Missouri upon "the authority to *purchase lands and to donate, lease, or sell the same to railroads.*"

The authority recited in the face of the bond, for the issue of the bonds, is first the assent of the voters of the City of Moberly given at a special election held on the 26th day of March, 1872, two hundred and twenty-eight votes being for the purchase and donation, and one hundred votes against the purchase and donation, a vote of more than two-thirds of the qualified votes, the number of qualified votes being determined by the number of votes cast.

County of Cass vs. Johnson, U. S. Rep. 95, page 360.

Second. "The orders of the board of trustees of the town of Moberly, (authorizing the election and submission to a vote,) made on the 18th day of April, 1872."

Third. The act of the General Assembly of the State of Missouri entitled "An act to authorize cities and towns to purchase lands and to donate, lease, or sell the same to railroad companies." Approved March 18, 1870.

The General Assembly of Missouri, on the 16th day of February, 1872, before any action had been taken by the trustees of the town of Moberly, entirely changed the provisions of the act of March 18, 1870.

This act made it a felony for any county court, city council of any city, board of trustees of any town, to donate, take or subscribe stock for such county, city or incorporated town in, or loan the credit thereof to any railroad company other company, corporation or association, unless authorized by a vote of two-thirds of the qualified voters of such city or incorporated town.

Section 2 of the act declares "all acts and parts of acts inconsistent with this are hereby repealed."

This is a general, not a local or special act, and operates on the act of March 18, 1870, and all other general acts. It expressly declares all acts and parts of acts inconsistent with it are repealed: declares the law to be that hereafter (after its passage) the right to donate, take or subscribe stock or loan its credit by a county court, city council or board of trustees of a town, shall only be exercised when authorized by "*a vote of two-thirds of the qualified* voters of such county, city or town." The purpose was clear to cancel a vote of two-thirds of the qualified voters, when the legislation then existent, or thereafter enacted, failed to provide for such two-thirds vote, not only required the vote,

but declared the issue of bonds without such to be *felony*, after the passage of this act of February 16, 1872.

The act of March 18, 1870, was amended in terms by the act of March 29, 1872. The proviso being changed from "*a majority of the qualified voters*" to "a majority *of two-thirds of the qualified voters*," so that after the 29th day of March, 1872, the legislature had in express terms authorized the issue of the bonds of cities and towns for the purchase and donation of lands, provided "*two-thirds of the qualified voters*" at a general or special election assented to the purchase and donation. The bonds sued on were issued on the 1st day of May, 1872. The recital of the act of 1870 on the face of the bond was the recital of that act as it stood on the statute-book on the 1st day of May, 1872, the date of the bonds, and included the amendment, because the amendment operated upon the original act on the day of its approval, March 29, 1872. The only thing required of plaintiff was to show power or authority to issue the bonds; that the bond was issued; that the plaintiff was the owner for value; to entitle him to recover under this pleading it was competent to show on the trial (as was the fact) that the election recited in the face of the bond was not the only election; but that there was a subsequent election after the amendment of March 29, 1872, and before the issue of the bonds sued on, at which election the voters, by a two-thirds vote, assented to the purchase and donation, thus removing all question as to compliance with the requirements of the constitution of 1865. The plaintiff below was entitled to his recovery because the power to make the instrument was given by the original act of 1870, by the act of February 16, 1872, and by the amendment of March 29, 1872.

CONSTITUTION of 1865, Article XI, Sec. 14.

SEC. 14. The General Assembly shall not authorize any county, city or town to *become a stockholder in* or *to loan its credit to any company*, association or corporation unless two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall assent thereto.

The act of 1870, by the judgment of the court below, is held to be in conflict with this provision of the constitution of the State.

This clause of the constitution prohibits counties, cities or towns, first, from becoming a stockholder in a company, association or corporation; second, *to loan its credit* to any company, association or corporation.

The first prohibition we need not discuss, as it must be conceded that it has no application to this case.

The second—prohibition—is the subject-matter to be considered. Preliminary to this consideration we must understand what is the office of section 14. The power to aid railroads by legislation, as an original legislative power, is not derived from this clause of the constitution, but is sustained by all courts as an exercise of the right of eminent domain: the exercise of the power of taxation for governmental purposes. This clause of the constitution authorizes no legislation; it is a prohibition upon legislation, imposes upon the legislature no duty, directs no legislation, require no legislation to enforce it, declares that certain legislation shall be of no authority unless assented to by "two-thirds of the qualified voters" at a general or special election. This clause of the constitution is *self-executing*, the machinery for an election, either regular or special, was provided by the general statutes; the mode by which the voter could express his assent or dissent was to use this machinery, the essence of the requirement of the 14th section being the assent of

two-thirds of the qualified voters at a regular or special election, thus in terms referring to *regular* or *special* elections provided by law, not as part of a law to give force to this clause. Section 14 does not either in terms or by implication prohibit the legislature from authorizing counties, cities or towns from loaning its credit to railroad companies. it requires that where such authority is given it shall be accompanied by the assent of the voters. If this view be correct so much of the act of 1870 and 1872 as required a vote was entirely gratuitous. The power to purchase and donate land given by these acts was legislative authority, the actual vote of two-thirds met the requirements of the constitution. Section 14 contemplates no legislation to give full force and operation to the prohibition; it is self-exercising.

Cooley's Constitutional Limitations, page 101.
People *vs.* McRoberts, 62 Ill., 38.
Mitchell *vs.* Ills. Coal Co., 68 Ills., 286.
People *vs.* Ramsey, 64 Ills., 41.
Beecher *vs.* Baldy, 7 Mich., 488.
State *vs.* Halliday, 64 Mo., 576.

We now come to consider the rules of interpretation that are recognized as applicable to constitutional provisions. The natural signification of the words employed is first to be considered. *Loan its credit* to any company, corporation, or association: loan its credit—loan means the temporary use of a thing to be returned; credit means responsibility; in the sense used it has a commercial meaning, endorsement of a liability involving its payment; assuming the debt of another; loan of credit as a unity means the temporary use of the responsibility or solvency of another, which may become an obligation. Looking at the verbiage, "*loan its credit*" in no sense does it embrace the word "*donate*," *to give;* these are the natural and ordinary mean-

ing of the words. "Chief Justice Marshall says: "The framers of the constitution and the people who adopted it must be understood to have employed words in their natural sense." (Gibbons *vs.* Ogden, 9 Wheaton, 188; Cooley Const. L., page 72; note 2; authorities cited.) Applying this rule, how can the words used—loan its credit—be held to include a donation, gift; they are not synonymous; do not mean the same thing; do not express the same idea; are widely and distinctly different. But when we come to apply the language of section 14 to the legislation of 1870 we are not required to grope in the dark as to the word *loan its credit*, to any company, association, or corporation. The various constitutional provisions on the subject of internal improvements—the legislation of the State for a long series of years—throw a flood of light upon the question. The constitution enjoined and the laws of the State provided for a liberal encouragement of internal improvement; the current was unbroken in this direction; the constitution of 1865 sounded the first note of a change of policy. From 1851 to 1865 the laws of Missouri are filled with railroad charters and railroad aid acts; to every one of these roads provisions were made for subscriptions by counties, cities, and towns. But in what were termed the main roads of the system—the Missouri Pacific, North Missouri, Iron Mountain, Southwest Branch, Hannibal & St. Joseph, and Platte County railroads, liberal aid was granted in the form of a loan of the credit of the State; and all these several railroads had loans of the credit of the State extended to them. The acts provide as a *loan of the public credit;* special bonds of the State were to be issued to all those roads, in like amounts with the capital stock of the companies paid up and expended in construction; the bonds were a lien upon the roads to which issued; the bonds were to be paid by the companies, and were denominated State bonds of the respective roads. This was the practical loaning of the

credit of the State, and covered the whole process. The clauses of the constitution of 1865 were adopted to stop this thing; nothing else. Sections 13 and 15, applicable to the State, and were absolute prohibitions. Section 12, applicable to counties, &c. There could be no more bonds issued for stock in corporations or *loan* of credit without assent of two-thirds of the qualified voters. The thing sought to be prevented was the ill-advised accumulation of debt, upon the pretence the liability was remote. The railroads would meet their liabilities, and if endorsed, by counties, cities or towns; that it was only a security, not a debt. The constitution provided a vote, so that the taxpayers should become liable only after the information of a canvass. It was this contingent, remote, and dangerous class of debts that section 14 was intended to reach. The right to purchase land for a specific and defined purpose, and to donate it for that purpose is to do an act in no sense a loan of credit, as declared by the laws and recognized by the courts of Missouri. The liability is definite and fixed—there is nothing remote or contingent. The debt created is a debt of the county, city, or town—*not a debt of a corporation endorsed;* not a liability contingent upon the failure of some one else to pay; *not a loan of credit to bolster up the debt of another.* It is a debt between the county or city and the owners of real estate; an authority to buy land and pay for it, with power afterwards to dispose of the land in a certain way. It might happen after buying the land the railroad company would refuse to locate their shops in the county, city, or town. The transaction would then be a purchase of land by the county, city, or town, with no further dealing with a railroad—would not the land still be held by the purchaser? Could the transaction be held void, and the purchase money recovered? The bond in this case was issued to the former owner of the land purchased, for the purchase money; is this transaction is a *loan of credit?* It is

absurd to say so. If language imports anything *loan of credit and the purchase and donation of land* are not synonymous; each has its separate meaning. The acts to be done to effect a loan of credit, and the acts to be done to purchase and donate land, present most forcibly the utter impossibility of the former embracing the latter; there is no homogeneity; they are in no sense cognate.

The rules of construction are plain:

"The court is to declare the law as written." It is the intent that is to be enforced; "but this intent is to be found in the instrument itself." "*Possible, or even probable, meaning*" the courts are not at liberty to search for outside of the instrument. "In considering a State constitution, with a view to its interpretation, the thing we are to seek is the thought which it expresses." To ascertain this the first resort in all cases is to the *natural signification of the words employed.* "That which the words declare is the meaning of the instrument, and neither courts nor legislatures have a right *to add to* or *take away* from *that meaning.*" "We must presume that words have been employed in their natural and ordinary meaning."

Chief Justice Marshall says: "The framers of the Constitution and the people who adopted it must be understood to have employed words in their natural sense, and to have understood what they meant." These rules are laid down by Judge Cooley, 4th Chap. Const. Lim. "To loan its credit," the words of the Constitution; can never be interpreted, *to forbid a purchase of land*—a *donation, leasing or selling of land*, which is authorized by the act of 1870, if these rules are of any signification.

The provisions of Sec. 14, Constitution of Missouri, forbids counties, cities or towns "to loan its credit" to any company, association or corporation unless assented to by a vote of two-thirds.

Now let us compare this provision with other State constitutions upon the same subject, in view of any light that they will afford, upon the scope of the words "loan its credit."

Ohio constitution (1851,) (from which the Missouri constitution was transcribed,) says, (Judge Wagner, 41 Mo., p. 463,) Art. 8, Sec. 6: "The General Assembly shall never authorize any county, city or town, or township, *by vote of its citizens or otherwise*, to become a stockholder in any joint stock company, corporation or association whatever, or *to raise money*, or *loan its credit to* or *in aid of any* such company or association."

The words "loan its credit," in their natural signification, were not alone used; but other apt words, "*to raise money*," or to "loan its credit." What was forbidden was "to raise money" in aid of corporations; to "loan its credit" in aid of corporations—distinct and different things. The Missouri constitution adopted the latter.

Constitution of Illinois, 1870, Separate Sec., municipal subscriptions to railroads:

> "No county, city, township or other municipality shall ever become subscriber to the capital stock of any railroad or private corporation, or *make donation to*, or *loan its credit* in aid of such corporation." Two distinct and different things prohibited: *making donations, also loaning credit.*

Constitution of Alabama, 1875, (Art. 4, Sec. 55:)

> The General Assembly shall have no power to authorize any county, city, town or other subdivision to *lend its credit*, or to *grant public money or thing of value*, &c. Two distinct prohibitions.

Colorado constitution, 1876:

> "Total prohibition by apt language."

Constitution Missouri, 1875:

Prohibits *donations*, as also loans of credit, absolutely.

New Hampshire constitution, 1877:

The general court shall not authorize any town to *loan* or *give* its *money* or *credit* directly or indirectly.

Nevada constitution, 1864:

"Shall not *donate* or *loan* money or *its credit*," &c.

Oregon constitution, (1857:)

No county, city or town * * * shall *raise money* for, or *loan its credit* to, or in aid of," corporations.

South Carolina constitution, 1868:

Restricts the powers of taxation, borrowing money, *contracting debts and loaning credit.*

Arkansas constitution, 1868:

The General Assembly shall restrict cities in borrowing money, contracting debts and loaning their credit, &c.

The line between *donation*, (including purchase of land,) and loan of credit, is so broad that the blind can feel it; that the man of vision to ignore it must shut his eyes.

The courts, by repeated decisions, furnish rules to be applied here:

"We are not to substitute other language nor our own notions of what the framers intended." Murphy and Glover, test oath case, 41 Mo., 373.

"Courts never declare a statute void unless in their judgment its nullity and invalidity are placed beyond a reasonable doubt. In cases of doubt every possible presumption, not directly and clearly inconsistent with the language and

subject matter, is to be made in favor of the constitutionality of the act."

State *vs.* Cape Girardeau and St. Louis R. R., 48 Mo., 468.

"No rule of construction is better established, both upon principle and authority, than that acts of the legislature are to be presumed constitutional until the contrary is shown. In cases of doubt every possible presumption, not directly and clearly inconsistent with the *language* and subject-matter, is to be made in favor of the constitutionality of the act."

State *vs.* Cape G. and S. L. R. R., 48 Mo., 471.

"Upon principle and authority the rule is settled that acts of the legislature are to be presumed constitutional until the contrary is shown. * * For that reason whenever there is a doubt it is to be construed in favor of the validity of the enactment."

Co. Court, St. Louis Co., *vs.* Griswold, 58 Mo., 192.
Hamilton and Treat *vs.* St. Louis Co. Co., 5 Mo., p. 3.

The reasoning in Walker *vs.* Cincinnati, 21 Ohio S., 14–54, upon the issue of bonds to build the great Southern railroad, in view of the absolute prohibitions of the constitution of Ohio, are unanswerable. The language of the constitution must prevail.

An act of legislation will only be declared void when it so violates the constitution as to leave no *doubt* or hesitation.

Sharpless *vs.* Mayor of Phil., 21 Penn. Stat., 147.

Sec. 14 has been before the supreme court of Missouri.

In the case of the State *vs.* Curators of State University, 57 Mo., 178, where the legislature, after the adoption of the constitution of 1865, authorized Phelps county to loan its credit to the State University, by an issue of bonds, the bonds were issued without a vote, and the question presented

in the case was whether the State University was an incorporation, within the meaning of Sec. 14. The court held that it was, and the bonds were invalid for want of a vote. Napton, Judge, delivered the opinion. He says: "When the proposed issue is not *sanctioned* by *the requisite vote*, we think it a suitable time to prevent the issue." Again: "It is manifestly the intention of the constitution to prevent *taxation without the assent of the tax-payers.*" The view of the court in this case was clearly that Sec. 14 only *prohibited* issue of bonds without a vote; for that reason these Phelps county bonds were held invalid. No where does the court say the act authorizing the issue of the bonds was unconstitutional, but contents itself with asserting the bonds are invalid, for want of the essential quality of the proviso of Sec. 14: the assent of two-thirds of the qualified voters of the county.

In a subsequent case, County Court of St. Louis Co. *vs* Griswold *et al.*, 58 Mo., 175, the court held the Park act constitutional, where a bonded debt was created for the purchase of land without a vote; drawing a marked distinction between "loaning of credit" and the creation of a debt for the purchase of property to be paid by taxation; the very distinction the presiding judge below ignored.

The learned judge below, in his opinion, uses this language: "In my judgment a municipality 'loans its credit' to a railway company, within the meaning of the constitutional provision here involved, whenever it issues its bonds to assist such company in building its road or any part of it, or to assist it in erecting shops which are necessary or useful in operating its road;" and it is clearly upon this view the judgment below was rendered. The error of the learned judge was a failure to appreciate the purposes of the act declared unconstitutional. It was not enacted to enable cities or towns to loan their credit to aid railroads in building machine shops, or other shops. No such purpose

is expressed in the act. It authorized cities and towns to *purchase land*, and to *donate, lease or sell* such lands so purchased to railroad companies; to secure the location of the shops, to get the benefits derived from their location, enhanced value of property, increase of population, additional subjects of taxation. It was a debt of the city or town authorized to be created for its own benefit, and for a purpose wholly foreign to any debt of a railroad company. Machine shops and other shops of a railroad company are in their location as much a subject of barter as a *fire engine*. It was to secure to cities and towns this means of adding to their taxables and population, and never contemplated that a single bond issued under it should be used to secure any debt, pay any debt, or be held as collateral for any debt of a railroad corporation. The land purchased might be given outright to the railroad, leased, or sold. The land itself, until thus disposed of, was the property of the city or town, and constituted the sole consideration for the indebtedness created.

The opinion of Judge Kekel, (printed record,) reaches the correct conclusion: That the act of March, 1870, does not authorize a *loan of credit* within the meaning of section 14, article 11, of the constitution: That the assent of two thirds of the voters to the creation of the debt and issue of the bonds covered every requirement of the constitution.

Conclusions.

The bonds sued on are valid, no matter what construction may be given to section 14, article 11, of the constitution.

The act of February 16, 1872, and amendment of March 29, 1872, were both the law of the State on the day of the issue of the bonds.

That the authority to "purchase land, and donate lease or sell the same," is not within the meaning of the term "loan its credit."

That section 14, article 11, constitution, 1865, prohibited *loans of credit*, but did not prohibit *purchase and donation* of *land*.

That "loans of credit" could only be made after the assent of two thirds of the qualified voters at a regular or special election.

That purchase and donation of land could be made with or without such assent.

That section 14, article 11, conferred no power upon the legislature. It simply required that in addition to legislative authority to create a certain class of indebtednes, there should be the assent of the voters at a general or special election.

That the act of March 20, 1870, need not have contained one word about a vote, still it would have been constitutional legislation.

There is nothing in section 14, article 11, mandatory upon the legislature, it only declares that where certain authority is given, to make the thing to be done valid and binding, assent of two thirds of the qualified voters, at a regular or special election, must be given.

Section 14, article 11, was the highest order of notice to persons dealing in securities of this class; that in addition to legislative authority there must be popular authority to give validity to debts created for a loan of credit; every purchaser was bound to know there was a vote of two thirds or that the security was valueless. No such requirement existed in the constitution for any other class of bonds.

The act of March 20, 1870, is not unconstitutional; does not conflict with section 14, article 11; was the exercise of power residing in the legislature independent of that section.

The judgment below should be reversed.

JOHN D. STEVENSON,
For Plaintiff in Error.

October Term, 187[illegible]80.

No 173.

VITAL JARROTT, Plaintiff in Error,

VERSUS

CITY OF MOBERLY, Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

BY

G. C. YEATON.

BOSTON:
FRANKLIN PRESS: RAND, AVERY, & CO.
1878.

In the Supreme Court of the United States,

OCTOBER TERM, 1878.

VITAL JARROTT, PLAINTIFF IN ERROR,

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OCTOBER TERM, 18[illegible]80.

VITAL JARROTT, PLAINTIFF IN ERROR, *v.* CITY OF MOBERLY, DEFENDANT IN ERROR.

THIS is a writ of error to reverse a judgment for defendant, entered at April term, 1878, of United-States Circuit Court, Western District of Missouri, the circuit and district judges joining in a certificate of division.

The action was upon coupons from bonds of date of May 1, 1872, issued by defendant, as shown by the recitals therein, by authority of act of Missouri legislature of March 18, 1870.

The question involved is whether the act of Missouri legislature of March 18, 1870, under which these bonds were issued, is in conflict with the provisions of the Constitution, 1865, Art. 11, sect. 14, because it attempts to authorize a "*loan of credit*" upon a mere majority vote.

The first section of this act is as follows:—

"An act to authorize cities and towns to purchase lands, and to donate, lease, or sell the same to railroad companies.

"SECT. 1. It shall be lawful for the council of any city or the trustees of any incorporated town to purchase lands, and to donate, lease, or sell the same to any railroad company upon such terms and conditions as such board may deem proper, for the purpose of assisting and inducing such railroad company to locate and build machine-shops or other improvements upon such lands; and for such purpose to levy taxes upon the taxable property of such city or town, and to borrow money, and to issue the bonds of such city or town for such purpose, provided *a majority of the qualified voters* of such city or town at a regular or special election to be held therein shall assent to such purchase and donation."

Constitution of 1865, Art. 11, sect. 14, is follows:—

"The General Assembly shall not authorize any county, city, or town to become a stockholder in, or to loan its credit to, any company, association, or corporation, unless *two-thirds of the qualified voters* of such county, city, or town, at a regular or special election to be held therein, shall assent thereto."

If the act conflicts with the Constitution, it must be because it undertakes to authorize the government of a city or town either to (1) "*become a stockholder* in," or (2) "*loan its credit* to," the corporation concerned upon a mere majority vote.

That the act under discussion undertakes to authorize a municipal corporation "to *become a stockholder* in" any railroad company, probably will not be claimed; for to *become a stockholder* is to become a joint participator in capital, occupation, income, losses, with all incident functions and liabilities in a very wide sense; and no "donation, lease, or sale" of "lands" could ever constitute such a relation.

Nor does the argument of the learned circuit judge in the case at bar, which puts the claim of the defendants here in its best form, suggest such a proposition.

This clause of the constitutional inhibition may, then, be dismissed from further discussion.

But it will be claimed by the defendants that the act undertakes to authorize a "*loan of credit*" in a manner within the inhibition of the Constitution.

What, then, is a "*loan of credit*," within the meaning of the Constitution?

I. Simply defined, instead of construed, a loan is "something furnished for temporary use, on condition that it shall be returned." (*Webster's Dictionary.*)

"It must be lent to be specifically returned at the determination of the bailment" (Story's Bailment, § 228; Bouvier Law Dic., tit. Loan). Nor can any inroad be made upon its character either as (1) something furnished for temporary use, or (2) something to be specifically returned, if it is to remain in any strict sense a *loan.*

Credit, Bouvier defines as "ability to borrow on the opinion conceived by the lender that he will be repaid."

Accepting these ordinary significations, if this "ability to borrow" when "furnished for temporary use," "to be specifically returned at the determination of the bailment," be the plain sense and meaning of a "*loan of credit*," only sophistry can enlarge it to include any thing like a purchase and donation, lease, or sale of lands; and other light than that of mere definition must be resorted to. Can construction shed any?

II. Among the rules settled for construction of constitutional provisions, few are more often enunciated or more frequently applied, than these or their equivalents:—

(1) A word or phrase having a well-established meaning must be held to have been used in that sense (Jenkins *v.* Ewin, 8 Heisk. 544).

(2) When a particular provision has received judicial construction, and is afterwards incorporated into a new or revised constitution, it must be presumed to have been used in that sense (Exp. Roundtree, 51 Ala. 51).

(3) Where a provision is adopted from the constitution of another State, the construction adopted there is also adopted (Daily *v.* Swope, 47 Miss. 867).

(4) "The intent is to be found in the instrument itself." It is "the thought which it expresses" (Hawkins *v.* Carroll County, 50 Miss. 735; Beardstown *v.* Virginia, 76 Ill. 34).

(5) An act of legislation will only be declared void "when it violates the Constitution, clearly, palpably, plainly; and in such manner as to leave no doubt or hesitation" on the mind of the court (Sharpless *v.* Mayor of Phila., 21 Penn. St. 147, 164).

(Rules for Constr. Black. Tax Tit., c. 41; Sedg., Stat. and Cons. Law, c. 6; Cooley, Const. Lim., c. 4.)

Nor has any State Court expressed itself more pointedly upon this subject than the Court of Missouri; as, for instance:—

"We are not to substitute other language, nor our own notions of what the framers intended, but are to seek for the thought which is expressed" (Murphy & Glover, Test Oath Cases, 41 Mo. 339, 373.)

Again: "Courts . . . never declare a statute void, unless in their judgment its nullity and invalidity are placed beyond a reasonable doubt. . . . In cases of doubt, every possible presumption, not directly and clearly inconsistent with the language and subject matter, is to be made in favor of the constitutionality of the act" (St. of Mo., *ex rel.*, Cir. Atty., Tenth Jud. Cir. *v.* C. G. & St. L. R. R., 48 Mo. 468, 471).

Examined in the light of any or all of these principles, is the statute under consideration to be held void because it attempts to authorize "a *loan of credit*" without the vote of two-thirds of the qualified voters?

When in 1865 this phrase was first inserted in the Constitution of Missouri, it had been employed in several other State constitutions for many years: in New York since 1846, Art. 8, sect. 9; in Maine since 1847, Art. 9, sect. 14; in Michigan since 1850, Art. 14, sect 6; in Ohio since 1851, at least; and in the last-mentioned state an act of legislature was passed as early as March 24, 1837, entitled, "An act to authorize a *loan of credit* by the State of Ohio to railroad companies, and to authorize subscriptions by the State to the capital stock of turnpike, canal, and slack-water navigation companies." *Vide* I. Swan & Critch, R. S., Ohio, 289, note.

In Pennsylvania, Art. 11, sect. 7, it was also in use as a constitutional phrase; while in Iowa (*vide* Chamberlain *v.* Burlington, 19 Iowa, 395) and in Wisconsin (*vide* Rogan *v.* Watertown, 30 Wis., 259) it was a phrase of known significance and uniform use, as also doubtless in many other States.

From its employment and collocation in these several constitutions, and its application in the instances when the courts of these States were called upon to construe their several constitutions, there could scarcely be said to be any doubt as to its exact meaning, as in quite common use, outside the State of Missouri.

One of the amendments to the Constitution of Minnesota,

in express terms, describes a *loan of credit* (*vide* Minnesota Constitution of 1857, Art. 9, sect. 10; amend. ratified in 1858), stipulating that "each company" receiving the "loan" shall "make provision for the punctual payment and redemption of all bonds issued," and the interest thereupon, "in such manner as to exonerate the treasury of the State from any advances of money for that purpose," and also pledge the net profits of the road, and convey to the State a portion of the land donated by the United States to the same road; and also covenant to complete a fixed number of miles of its road within a time mentioned.

It is exactly illustrated also in the case of Benson *v.* Mayor, &c., of Albany, 24 Barb. 248, where the city of Albany *loaned its credit* by issuing its bonds to raise money for the Albany and Northern Railroad Company, taking back from the railroad company a mortgage of its property, to secure the payment of the interest and principal of the bonds. The railroad, unbuilt and irresponsible, could not obtain the funds to complete its line, for it had little or no credit; the city of Albany had abundant credit. To enable the road to complete a line, Albany believed would enhance the value of its property, the city loaned the railroad its own municipal credit, and received security for the repayment of the sum so borrowed by mortgage from the railroad company.

This was literally not a donation, but a *loan*, not of money, but of *credit*, wherewith to raise money; and these two indispensable elements enter into every one of the cases where the courts called the transaction a "*loan of credit.*" *Vide* Chamberlain *v.* Burlington, 19 Iowa, 395; Rogan *v.* Watertown, 30 Wis., 259.

This also was the method contemplated and the construction of the statute of Ohio, of March 24, 1837. *Vide* note to I. Swan & Critch, R. S., Ohio, 289.

Nor was the phrase wholly new to the State of Missouri when introduced into the Constitution of 1865. It had been in use, and with identically the same significance it is shown

to have had in New York, Ohio, Iowa, Wisconsin, Minnesota, in *loaning the credit* of the State to railroads, by authority of repeated legislative acts, in "1851, and at various times between that year and 1855." *Vide* Han. & St. Jo. R.R Co. *v.* Bartlett *et als.*, 123 Mass. 15, 16.

And that these instances were not exceptional in her legislation, but simply typical of many others of identical import, is apparent both from Mr. Justice Strong in Woodson *v.* Murdock, 22 Wall, 351, 352, 368, and Mr. Justice Miller, p. 374, as also from Art. 4, sect. 15, of the very constitution now under examination, by which it is clear that the interest of the State in various railroads was of sufficient magnitude to require protection by organic law, and this interest could scarcely have been obtained in any other mode than in consideration of this same "*loan of credit.*"

Here, then, we have an expression, by no means obscure or involved, doubtful or uncertain, but simple, plain, clear, and certain, with easy, direct, and fixed meaning, in common and known usage both at home and in other States, employed alike by people, conventions, constitutions, courts, and legislatures, always in one and the same sense.

What authority can be found, or what reason assigned, for attributing to it in this constitution another and a different sense?

If there is any anywhere, prior to 1865, it has eluded the diligence of counsel.

Since 1865 the authority would seem to be nearly as overwhelming, and equally completely unbroken.

In a recent opinion of the Supreme Court of Missouri, given to the General Assembly as to the credit of the State loaned to the Hannibal and St. Joseph Railroad Company, the same construction we claim seems to be adopted. *Vide* 55 Mo. 497, 498.

But the opinion of the learned Circuit Judge, given in the case at bar, holds the act in question unconstitutional and void, because in conflict with Art. 11, sect. 14, of Constitution of 1865; and therein he seems to hold this clause, with its

context, to inhibit all "debts in aid of railways to be paid by taxation."

If so, the clause inhibiting municipal corporations from "becoming stockholders" is certainly superfluous; for if any and all forms of "debts in aid of railways" are inhibited by the inhibition "*to loan credit*," this must include indebtedness to obtain funds to pay for stock.

But subscriptions to stock are a known and common method of aiding railways: for instances, *vide* Lawson *v.* Milwaukee and Northern Railroad Co. *et al.*, 30 Wis. 597; State *ex. rel. v.* Greene County, 54 Mo. 540; Act of Mo. Leg., March 21, 1868, sect. 2.

But a far more grave objection to the construction claimed in this opinion arises upon examining the reasoning which seeks to support it, thus: "Constitutional provisions are usually expressed in general terms, and do not descend to the detail often necessary in legislative enactments." But, conceding the rule of construction which often applies general constitutional provisions to specific legislation within their spirit, the case here is the exact converse.

If the phraseology employed here had been general, as, for instance, "No municipal aid shall ever be authorized;" or comprehensive, as "No appropriation of money, credit, or other thing of value, shall ever be authorized in aid of,"— either form might well have been held to strip the legislature of all power to aid, by permitting "subscriptions to stock" or "loans of credit;" but, so far from being either general or comprehensive, it is particular, specific, and neither vague nor flexible in meaning, rigorously precise and exclusive in its established meaning, and points only to two known and practised methods of rendering aid to railroads; and to extend these phrases, either or both of them, to include all forms of municipal aid which could be created by public indebtedness, is to subvert sound principles of construction, by subjecting simple language to a strain it is ill-fitted to endure.

It ceases to be construction, and becomes destruction.

But the learned Judge cites in support of his views, Taylor *v.* Com. of Ross Co., 23 Ohio St. 22, 76, 79; Penn. Railroad Co. *v.* Phila., 47 Penn. St. 189, 194. Notwithstanding the great weight of the opinion of so able a jurist, it is respectfully suggested that neither of the cases cited afford any authority for the construction claimed. Penn. Railroad Co. *v.* Phila., 47 Penn. St. 189, construed Pennsylvania Constitution, Art. 11, sect. 8 (Amend. to Const., Brightly's Purd. 24), which forbade a municipal corporation becoming stockholder in any corporation, "or to obtain money for or loan its credit to any corporation," as interdicting the retention of certain portions of dividends, declared by the railroad upon stock held by the city, to apply the same as an indemnity fund against losses from a subscription to steamship stock.

It was a literal and direct appropriation of the city's money for the benefit of the steamship company, which, as the court held, the legislature could not authorize; *a fortiori*, it could not be done without legislative act.

The case neither called for, nor gave, any consideration whatever to what constituted a "*loan of credit.*" It was simply an "obtaining of money" for a corporation.

Taylor *v.* Commissioners of Ross Co., 23 Ohio St. 22, construed Art. 8, sect. 6, of Ohio Constitution, which prohibited the legislature authorizing a municipal corporation to become stockholder or "to raise money for, or loan its credit to or in aid of" corporations, &c.; and the case contains nothing conflicting with plaintiff's position here, and certainly did not turn upon a construction of a "*loan of credit*," but presented a direct "raising of money" for a railroad.

The learned Circuit Judge claims to find strong support in State *v.* Curators of State University, 57 Mo. 178; but the learned District Judge, who dissents from his opinion, and adopts the view we present here, says, "The Phelps County case, 57 Mo. 178, and the St. Louis County Court case, may be said, so far as the case under consideration is concerned, to fairly neutralize each other, the first with a leaning

adverse to the view here taken, the latter favorable to it." And to this we may add that the opinion of the same Court, which had been previously given to the legislature, reported 55 Mo. 497, 498 (cited *supra*), certainly turns the scale of judicial opinion of that Court, in favor of the position of the learned District Judge and that of the plaintiff here.

But if otherwise, and even if that Court had directly passed upon the validity of the statute of March 18, 1870 (which it did not), its decision, having been subsequent to the issue and sale of the bonds, would fall within the doctrine of this Court in Gelpcke *v.* Dubuque, 1 Wall. 175; Butz *v.* Muscatine, 8 Wall. 575; Olcott *v.* Supervisors, 16 Wall. 678; and still less weight can be attributed to mere analogous reasoning, either so remote or obscure, that the learned Federal Judges, sitting in the same State, could differ as to its meaning.

But the dissenting opinion finds very full support in contemporaneous usage, and construction of the same phrases in the constitutions of many other States, both as applied to the State itself and its municipal subdivisions.

We cite several which have undergone recent revision (for similar provisions in many of the earlier constitutions, *vide* 2 Hough's Am. Const., p. 754); in each of which it will be perceived language is employed, which is utterly inconsistent with imposing upon the two phrases, "subscription to stock" and "loan of credit," so heavy a burden of meaning as the learned Circuit Judge attempts.

For if there be any weight in the rule, that such construction is to be given, as will give force and meaning to every part of a constitutional provision, then the wide scope claimed for these two phrases would seem quite untenable, as it leaves little or no meaning to be borne by the accompanying expressions; and the almost universal use of more general or more comprehensive expressions strongly negatives the claim that the two phrases unaided can be made the vehicles of so large a load.

Instance the following: —

Alabama Constitution (1875), Art. 4, sect. 55: "The General Assembly shall have no power to authorize any county, city, town, or other subdivision of this State, to *lend its credit*, or to grant public money, or thing of value in aid of or to any individual, association, or corporation whatsoever, or to become a stockholder in any such corporation, association, or company, by issuing bonds or otherwise."

Colorado Constitution (1876), Art. 11, sect. 1: "Neither the State, nor any county, city, town, township, or school district, shall *lend or pledge the credit* or faith thereof, directly or indirectly, in any manner to or in aid of any person, company, or corporation, public or private, for any amount, or for any purpose whatever, or become responsible for any debt, contract, or liability of any person, company, or corporation, public or private, in or out of the State."

Sect. 2: "Neither . . . shall make any donation or grant to or in aid of, or become a subscriber to, or shareholder in, any corporation, &c." . . .

Illinois (1870), Art. 14, additional sect.: "No county, city, town, township, or other municipality, shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to, or *loan its credit* in aid of, such corporation, provided, &c." . . .

Maryland Constitution (1867), Art. 3, sect. 34: "The *credit of the State* shall not in any manner be given or *loaned* to, or in aid of, any association or corporation; nor shall the General Assembly have the power, in any mode, to involve the State in the construction of works of internal improvement, nor in granting any aid thereto, which shall involve the faith or credit of the State, nor make any appropriations therefor, except" . . .

New Hampshire Constitution (1877), Part 2, sect. 5: "The General Court shall not authorize any town to *loan* or give *its* money or *credit*, directly or indirectly, &c." . . .

Nevada Constitution (1864), Art. 8, sect. 9: "The State shall not donate or *loan* money or *its credit*, subscribe to or be interested in the stock of any company, association, or

corporation, except corporations formed for educational or charitable purposes."

Sect. 10: "No county, city, town, or other municipal corporation, shall become a stockholder in any joint-stock company, corporation, or association, except railroad corporations." . . .

Here, while municipal subdivisions are left free to subscribe to stock, or aid in any manner railroads, and aid, in any manner other than by subscribing to stock, other corporations, the State is excluded by broad and comprehensive language from any form of aid to any corporations other than educational or charitable.

Ohio Constitution (1851), Art. 8, sect. 6: "The General Assembly shall never authorize any county, city, town, or township, by vote of its citizens or otherwise, to become a stockholder in any joint-stock company, corporation, or association whatever; or to raise money for, or *loan its credit* to or in aid of, any such company, corporation, or association."

Oregon Constitution (1857), Art. 11, sect. 9: "No county, city, town, or other municipal corporation, by vote of its citizens or otherwise, shall become a stockholder in any joint-stock company, corporation, or association whatever, or raise money for, or *loan its credit* to or in aid of, any such company, corporation, or association."

South Carolina Constitution (1868), Art. 9, sect. 9: "The General Assembly shall provide for the incorporation and organization of cities and towns, and shall restrict their powers of taxation, borrowing money, contracting debts, and *loaning their credit*."

Arkansas Constitution (1868), Art. 5, sect. 49: "The General Assembly shall provide for the organization of cities and incorporated villages by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts, and *loaning their credit*, so as to prevent the abuse of such power."

Art. 19, sect. 6: "The *credit of the State* or counties shall

never be *loaned* for any purpose without the consent of the people expressed through the ballot-box."

In this State, Legislative Act of July 21, 1868, sect. 2 of which authorized railroad commissioners to receive "applications for the *loan of State credit* herein provided for" and sects. 7, 8, provided that the railroads thus aided should meet at maturity both interest and principal of the bonds thus issued, and empowered the State Treasurer by writ of sequestration to seize the roads, in case of default, and apply the revenue, was held void because an attempt to loan the *credit of the State*, without submission to popular vote as Art. 10, sect. 6, of the Constitution required. (State of Arkansas *v.* Little Rock, Miss. Riv., and Tex. R'y Co., 31 Ark. 701, 710, 711, 714.) In the same State, Act of March 23, 1871, authorizing the issue of "Arkansas State Levee-bonds," both interest and principal of which the beneficiaries were to pay (*vide* sect. 8), has been held void for the same reason (Smithee Commissioners and Appellants *v.* Garth, Supr. Ct. Ark. Nov. term, 1877, probably to be reported in 32 Ark. St. Rep.).

New York Constitution (1846), Art. 7, sect. 9: "The *credit of the State* shall not in any manner be given or *loaned* to, or in aid of, any individual, association, or corporation."

This section is transcribed almost *in totidem verbis* into Wisconsin Constitution (1848), Art. 11, sect. 3: Michigan Constitution (1850), Art. 14, sect. 6; Ohio Constitution (1851), Art. 8, sect. 4; Virginia Constitution (1870), Art. 10, sect. 12; Maine Constitution (amend. 1847), Art. 9, sect. 14; West Virginia Constitution (1872), Art. 10, sect. 6; all are substantially similar provisions, while Missouri herself, in her new Constitution of 1875, Art. 9, sect. 6, says, "No county, township, city, or other municipality, shall hereafter become a subscriber to the capital stock of any railroad or other corporation or association, or make appropriation or donation, or *loan its credit* in aid," &c.

Why so comprehensive an addition to the phraseology of Art. 11, sect. 14, in Constitution of 1865, if the language then

used can receive the construction given it by the learned Circuit Judge? Is it simply superfluous?

It is further noteworthy that in several of the States, where *only* these two forms of aid to railroads and other corporations are inhibited, such language is employed as to indicate unmistakably that the construction here claimed is the only tenable one, and that a literal "loan," as distinguished from other form of aid, is contemplated; notably in Georgia Constitution (1868), Art. 3, sect. 6, sub-div. 5: . . . "The General Assembly shall pass no law making the State a stockholder in any corporate company; nor shall the *credit of the State* be granted or loaned to aid any company, without a provision that the whole property of the company shall be bound for the security of the State, prior to any other debt or lien, except to laborers," in which the provision for security for the *loan of credit* puts its character and meaning beyond discussion.

Equally clearly and to like effect in Tennessee Constitution, (1870), Art. 2, sects. 31 and 33, respectively prohibiting any *loan of credit* thereafter, and the issue of bonds to such railroads as are in default for bonds previously issued to them.

If in any of the States there be an instance where, the intent being to inhibit all forms of aid, direct or indirect, by gift, loan, purchase, or appropriation, and either quite general or very much more comprehensive language is not employed, it has eluded the search of counsel; and, if by any State or Federal tribunal these expressions have been held so elastic as the learned Circuit Judge holds them, the case certainly is not cited by him.

A *loan of credit* of the United States Government, as uniformly known and used in Congressional proceedings, has long had the same specific significance; and imports, as essentially different from a mere appropriation, donation, or subsidy, a grant of the temporary use of the national credit, with express stipulation for full indemnity against ultimate liability or loss to the government, and that the beneficiary will at maturity meet all obligations.

This is unmistakably plain from the whole tenor of the discussion in both Houses which preceded the loan of national credit to the Union Pacific Railroad, no less than from the terms of the original act of incorporation itself: Act July 1, 1862; 12 Stat. at Large, 489, 492, sect. 5; Cong. Globe, Part 3, 2d sess. 37th Congress, 2804 *et seq.*, 2832–2835; especially speech of Senator Latham, ib., 2675, 2676.

Confessedly, in constitutional construction, while *intent* is to govern, it is the *expressed intent*, and no mere conjectured motive, behind and outside the words employed; and as is aptly suggested in Beardstown *v.* Virginia, 76 Ill. 34, "The question is not, what was the intention of the framers, but what is the meaning of the words they have used. A constitution does not derive its force from the convention which framed it, but from the people who ratified it; and the intent to be aimed at is that of the people, and this is found only in the words of the text."

So, too, the Missouri Court has declared that "it is not the intention of the members which is to govern, but that of the law which they have enacted; and that the legislative body must be understood to have employed words in their natural sense, and to have intended what they have said" (citing numerous cases). (Murphy and Glover, Test Oath Cases, 41 Mo. 339, 373.)

Even though the Court may conclude that, "had the framers contemplated the possibility of a grant to a municipal corporation of such powers as the acts under consideration confer, they would have interposed further limitations upon legislative discretion; but omissions of such a grave character surely cannot be supplied according to the conjectures of a Court" (Walker *v.* Cincinnati, 21 Ohio St. 14, 54).

III. The avowed object of the act of March 18, 1870, the donation, lease, or sale of land to railroad companies, as the site of "machine-shops or other improvements," is widely removed from the evils the State and its subdivisions had suffered (as is apparent from its legislative history cited

hereinbefore, and pointed out by the dissenting opinion of the learned District Judge) when the constitution of 1865 was adopted; especially in that while a *loan of credit* or subscription to stock ordinarily entailed a very considerable expenditure, and sometimes unknown liability, with perhaps little or no local improvement, except possibly to see a railroad train speeding through at forty miles an hour, the act in question contemplated a strictly local improvement (for to suppose a vote, under its provisions, to purchase land within territorial limits other than its own, involves a practical absurdity) at a necessarily limited expenditure by the purchase of small parcels of land, which, if donated outright, would still remain within the same municipal limits, with a valuation largely enhanced by more or less expensive structures, and subject to local taxation.

The peculiar mischief sought to be avoided by the constitutional limitation of a "loan of credit" to such enterprises only as could command a two-thirds vote, was doubtless an ultimate municipal liability for uncertain and usually large amounts, through the inadequacy of supposed security taken against such liability, while the people were beguiled with "golden legends" of glib railroad projectors and contractors; but no such dangers possibly lurk beneath a mere donation of land for local improvement, for which no re-payment was ever contemplated, for no sophistry so subtle as to dwindle out of plain sight the area of so many acres of land, nor could any citizen of common comprehension be deluded in voting for an avowed gift of a parcel of land, the full value of which he then knew, without promise of re-payment. Safely, therefore, might such an appropriation be intrusted to a mere majority vote.

Thus we have seen this phrase, "*loan of credit*," examined etymologically, in popular use, historically known to constitutional conventions, in constitutions themselves (of many States), employed in legislative acts, in congressional debates, by State and Federal Courts, without known exception, meaning always the single form of aid to enterprises which imports

a debt of nation, state, or municipality to the holder thereof, but literally a *loan* to the persons or corporation intrusted with the enterprise, with provision that such persons or corporation shall meet every money obligation thereof, either at maturity or subsequently, and usually some form of security taken therefor; and in no single instance have we found it lacking the essential quality of a "*loan*," to wit, *a contract for repayment or indemnity against ultimate loss.*

Its character is exactly that of an accommodation indorser of commercial paper, which, indeed, indorser must pay to holder for value, but upon which, as between maker and indorser, neither law nor the parties ever contemplate any ultimate liability of the indorser.

That this significance also, without known exception, has been the only understood one in Missouri, is beyond controversy.

Hence, if, instead of a loose deduction from the *conjectured motive* of the original framers of this constitution, we seek the *true intent* of the language actually employed, by a rigidly close inductive process, we are conducted directly to the conclusions following: —

(1) Outside of Missouri, the expressions, "become a stockholder," and "loan its credit," as applied to States and municipal corporations in 1865, for many years had been in wide use, and had a clear, definite, and established meaning, in many States (notably, New York, Ohio, Pennsylvania, Wisconsin, Minnesota, Tennessee, and Georgia).

(2) This meaning was the same in constitutions, legislative acts, commercial and common language.

(3) It was the one which simple definition affixes.

(4) It had also been adopted and current for many years in Missouri, both in legislative acts and commercial use

(5) No judicial construction in that State had ever affixed any other meaning to them, or either of them, prior to 1870.

(6) The fair preponderance of authority of the State Supreme Court is still in favor of the same construction.

(7) Since 1870, in many States, including Missouri itself,

revised constitutions make use of the same specific forms of expression, coupled with other specific and general expressions, the employment of which is clearly tautological unless the sense before that date, universally given, be still retained.

(8) No known rule can construe them differently now.

(9) The Act of March 18, 1870, is not within either of the prohibitions of Art. 11, sect. 14, of the Constitution of 1865, for it attempts to authorize neither a "*subscription to stock*" nor a "*loan of credit.*"

G. C. Yealm



Supreme Court of the United States.

No. 173.

VITAL JARROTT, PLAINTIFF IN ERROR,

vs.

THE CITY OF MOBERLY, DEFENDANT IN ERROR.

JAS. O. BROADHEAD,
Attorney for Defendant in Error.

Judd & Detweiler, Printers.

Supreme Court of the United States.

No. 173.

VITAL JARROTT, PLAINTIFF IN ERROR,

vs.

THE CITY OF MOBERLY, DEFENDANT IN ERROR.

This suit is brought to recover judgment on coupons detached from bonds issued by the city of Moberly, Missouri.

The bonds were issued for the purpose of purchasing and donating lands to the St. Louis, Kansas City and Northern Railway Company to assist and induce said company to locate and build machine shops thereon, and pursuant to an act of the General Assembly of the State of Missouri, entitled "An act to authorize cities and towns to purchase lands and to donate, lease or sell the same to railroad companies." Approved March 18, 1870.

See Laws of Missouri, 1870, page 163.

The first section of that act is as follows:

SECTION 1. It shall be lawful for the council of any city, or the trustees of any incorporated town, to purchase lands and to donate, lease or sell the same to any railroad company upon such terms and conditions as such board may deem proper, and for the purposes of assisting and inducing such railroad company to locate and build machine shops or other improvements upon such lands; and for such

purposes to levy taxes upon the taxable property of such city or town, and to issue the bonds of such city or town for such purposes: *Provided* a *majority* of the qualified voters of such town or city, at a special election to be held therein, shall assent to such purchase and donation.

To plaintiff's petition defendant has filed a demurrer, and for the sake of this argument it is admitted that the facts are well pleaded, and that the law has been strictly complied with in the issuance of the bonds. The only question now desired to be raised is: Are bonds valid that have been issued under this law?

Brief.

1. The act authorizing the issue of these bonds is unconstitutional, being in conflict with section 14 of article 11 of the constitution of Missouri, 1865, which reads as follows:

"The General Assembly shall not authorize any county, city, or town to become a stockholder in, or to loan its credit to any company, association, or corporation, unless two-thirds of the qualified voters of such county, city, or town at a regular or special election to be held therein shall assent thereto."

The first section of the act under which these bonds were issued authorizes the proper officers of cities and towns to issue such bonds, "provided a *majority* of the qualified voters of such town or city, at a regular or special election to be held therein, shall assent to such purchase and donation;" while section 14, of article 11, of the constitution of Missouri, 1865, provides that "The General Assembly shall not authorize any county, city, or town to become a stockholder in, or loan its credit to any company, association, or corporation, unless *two-thirds* of the qualified voters of such county, city, or town, at a regular or special election to be

held therein shall assent thereto." If this constitutional provision applies to laws authorizing cities and towns to issue bonds for the purposes set forth in the act of March 18, 1870, then the Legislature, in passing said act, attempted to set at nought the constitutional requirement of the people's consent in the mode pointed out by that instrument. This it could not do.

See Harshman *vs.* Bates County, 2 Otto, 569.

But plaintiff will, undoubtedly, contend that the constitution only restricts the "becoming a stockholder" or "loaning its credit" in the narrow meaning of these words. Constitutions are not thus construed. "We cannot construe a constitution with the same strictness as a criminal statute, and hold nothing to be within its meaning which is not exactly included in its words. Such an instrument establishes general principles in comprehensive terms, and should be construed with liberality, to effectuate the intent of the people wherever that intent is sufficiently apparent."

The legislative intent is here plainly apparent. It was to prevent the incurring of debts by the municipal authorities of counties, cities, and towns, which must be paid by taxation, unless it is assented to by two-thirds of the qualified voters. It is absurd to claim that the proper interpretation of the language of the constitution is that the authorities of counties, cities, and towns may not loan their credit without such assent, and yet may give away their property, or saddle their municipalities with a debt to raise money to give away to railroad corporations. The word township is not mentioned in the constitutional provision, and yet with equal propriety it might be maintained that this restriction does not apply to townships; but this Court, in the case of Harshman *vs.* Bates Co., 2 Otto, 569, says:

"That the framers of the constitution intended to require the assent of two-thirds of all the qualified voters of a

county, city or town, as a prequisite to a subscription to a railroad or other company, and did not intend the same thing with regard to townships, seems almost absurd."

In the case of State of Missouri *vs.* Curators of the State University, 57, 178, the supreme court of Missouri, in considering this section of the constitution, asks: "What was the object of the restrictions on county courts, city and town municipalities?" and answers the question by saying:

"The object was plainly to prevent them from taxing the people without their consent;" and further, says the court, "It is manifestly the intent of the constitution to prevent taxation without the consent of the tax-payers, and without regard to the purposes of the proposed tax."

The case at bar must be controlled by the decision last referred to. In that case it is true the bonds were delivered to the curators of the State University, to be by them sold and converted into cash, with which to buy bonds for the School of Mines; while in this case the bonds were to be converted into cash by the officers of the municipality, with which to buy lands for the railroad company. The object of the law in both instances in authorizing the issue of bonds was the purchase and donation of lands to corporations, and it is difficult to see how the fundamental law of the State can be evaded by a change of the person by whom the credit of the municipality is to be converted; for in either case the credit of the municipality is to be converted into money, and in either case the debt thus created is to be paid by taxation upon the people.

The discrimination undertaken to be drawn here was treated by the supreme court of Illinois as "unworthy of attention."

See Chicago, Danville and Vincennes R. R. C. *et al.* *vs.* Frederick Smith, 62 Ills., 268.

The language of the court in that case is as follows: "The remaining question is, whether a distinction exists between donation in aid of a road and a subscription to the capital stock of the corporation? The distinction is more apparent than real; and, in our view, is entirely shadowy. No principle would justify the authority to a municipal corporation to become a stockholder in a railroad company merely to acquire equitable rights and to prevent the misapplication of the funds. The power is granted in consideration of the public benefits, and these are as great in the one case as in the other.

If the bonds are valid, they create a debt against the city for the benefit of a railroad corporation; and are thus within the mischief which the constitution was intended to guard against.

Some stress is laid upon the fact that the bonds recite that they were issued in pursuance of an election held on the 26th of March, 1872, and that at that election 228 votes were in favor of the purchase and donation and only one vote against the purchase and donation; and that, therefore, the provisions of the constitution have been complied with. But the constitution does not enforce its own provisions.

See St. Jo and Denver City R. R. Co. *vs.* Buchanan Co., 39 Mo., 485.

The municipal authorities could not act without an authority from the legislature, and if the legislative authority is unconstitutional and void the action under it was void. It is equivalent to acting without any law at all, but simply under the provisions of the constitution; and the presumption is that if the act was void the people had the right to treat it as a void act and refuse to vote; and there is nothing to show that the vote actually given constituted any considerable portion of the qualified voters of the city. Two-

thirds of those qualified voters might have refused to vote, and they could not be prejudiced by any such non-action on their part, if the law under which they were called upon to vote was a void act.

The question before the court is simply a question whether the exercise of power under an act clearly in violation of the constitution is a valid exercise of power?

The further question arises, Was the purchase and donation of these lands for a public use or purpose?

"What is a public use is abstractly a question of law, and, like many other unambiguous expressions having a technical meaning, is not so easily defined in other terms as one would ordinarily suppose. It must undoubtedly be a use designed to subserve some public interest or demand, an interest or need of a *public character* contradistinguished from that of a *private character*." (58 Maine, 617.)

By the locating and building of these machine shops in the town of Moberly what public interest or demand was subserved more than would be by the building of a bridge manufactory or other enterprise of like kind. It cannot be claimed that either the city or the State can compel the owners of these machine shops to repair the machinery, nor can the price at which such repairing shall be done be fixed by law. Neither can the city or State prevent the owners of such shops from repairing or manufacturing for other corporations or persons, nor from ceasing to use such shops, nor from removing them. "In deciding whether, in the given case, the object"—that is whether for public or private purposes—"for which the taxes are assessed, falls upon the one side or the other of this line, they must be governed mainly by the course and usage of the Government, and the objects for which taxes have been customarily and by long course of legislation levied; what objects or purposes have been considered necessary to

the support and for the proper use of the government, whether State or municipal." (20 Wallace, 665.)

It cannot be said that taxes have customarily and by long course of legislation been levied for such purposes as those authorized by the act under consideration. On the contrary, whenever a legislature has attempted to confer such power, the law has been decided invalid. (20 Wallace, 655; 2 Dillon, C. C. R., 353; 1 Sneed, (Term,) 698; Savings Association *vs.* Topeka, 3 Dillon, 376.)

JAS. O. BROADHEAD,
Attorney for Defendant in Error.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 266.

WILLIAM ADAM AND J. L. SCHUMAN, PLAINTIFFS IN ERROR,

vs.

J. R. NORRIS, VAN ROBBINS, JAMES TRIPLETT ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED OCTOBER 14, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 266.

WILLIAM ADAM AND J. L. SCHUMAN, PLAINTIFFS IN ERROR,

vs.

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a UNITED STATES OF AMERICA, *ss:*

To J. R. Norris, Van Robbins, James Triplett, A. J. Triplett, Calvin Drum, T. S. Brown, James Drum, Thomas Martin, John H. Rice, Thomas Gromley, T. B. Jamison, and Theodore Le Roy, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be held at the city of Washington, in the District of Columbia, on the second Monday of October, A. D. 1878, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth judicial circuit in and for the district of California, wherein William Adam and J. L. Schuman are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 18th day of September, A. D. 1878, and of the Independence of the United States the 103d.

[SEAL.] LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

b (Indorsed:) United States Supreme Court. William Adam et al., pl'ff's in error, vs. J. R. Norris et al. def'ts in error. Citation.

I admit service of a copy of this citation this 18th day of September, A. D. 1878.

B. W. BROOKS,
Attorney for Def'ts in Error.

Filed September 18, 1878.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *D'p'y Clk.*

c UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the circuit court of the United States of the ninth judicial circuit, in and for the district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between William Adam and J. L. Schuman, plaintiffs in error, and J. R. Norris, Van Robbins, James Triplett, A. J. Triplett, Calvin Drum, T. S. Brown, James Drum, Thomas Martin, John H. Rice, Thomas Gromley, T. B. Jamison, and Theodore Le Roy are defendants in error, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 18th day of September, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the 103d.

The above writ of error is hereby allowed.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

Attest, &c.:

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *D'p'y Cl'k.*

d The answer of the judges of the circuit court of the United States, of the ninth judicial circuit, in and for the district of California.

The record and allproceedings of the plaint, whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States of America, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

By the court:

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *D'p'y Cl'k.*

(Indorsed:) United States Supreme Court. William Adam et al., pl'ffs. in error, vs. J. R. Norris et al., def'ts in error. Writ of error. Filed Sept. 18, 1878. L. S. B. Sawyer, clerk, by J. F. O'Beirne, d'p'y cl'k.

1 *Complaint.*

District court of the first judicial district of the State of California, in and for the county of Santa Barbara.

WILLIAM ADAM & J. L. SHUMAN, PLAINTIFFS,
against
JOHN R. NORRIS, VAN ROBINS, JAMES R. TRIPLETT, A. J. Triplett, Calvin Drum, T. S. Brown, James Drum, Thomas Martin, John H. Rice, Thomas Gormley, T. B. Jamison, Theodore LeRoy, John Doe, Richard Roe, John Styles, Richard Styles, John Den, & Richard Fen, defendants.

2 The above-named plaintiffs complain of the above-mentioned defendants, six of whose true names the plaintiff is ignorant of and has therefore sued them by fictitious names, viz, the names of John Doe, Richard Roe, John Styles, John Den, & Richard Fen, whose true names when discovered the plaintiff prays may be inserted herein, with proper and apt words to charge them, and for cause of action avers and shows to the court that heretofore, on the first day of June, 1877, they were, ever since have been, and now are the owners and entitled to the possession of all that certain piece, parcel, or tract of land situate and being partly in the county of Santa Barbara and part' in the county of San Louis Obispo, in the State of California, known, bounded, and described as follows, viz: commencing at a live oak tree marked G, No. 1 & P. L. No. 5, standing at a common corner of the Gaudilupe and Punta de la Laguna ranchos, as officially surveyed by the authorities of the United States, and running thence north 11° east 588 chains to an elder tree marked P. L. No. 1 & G. No.

10; thence south 480 east $203\frac{40}{100}$ chains to a sycamore tree marked G No. 17; thence south 31° 30′ west $513\frac{75}{100}$ chains to the place of
3 beginning; containing about five thousand one hundred acres of land, and being a part of the rancho known as the Punta de la Laguna. That afterwards, to wit, on the second day of June, 1876, said defendant entered into and upon, and took possession of, the whole of said premises, and ousted and ejected the plaintiffs therefrom, and said defendants do now, and ever since said second day of June, 1876, have continuously, unlawfully, and wrongfully withheld the possession of said land and premises, and the whole thereof, from the plaintiffs, to their damage in the sum of ten thousand dollars.

Plaintiffs further allege that the value of the use and occupation of said land is three dollars per acre per year. Wherefore the plaintiffs pray judgment against said defendants for the possession of said land and premises above described, and for ten thousand dollars damages for the wrongful and unlawful entry upon the lands, together with three dollars per acre per annum for the value of the use and occupation of said lands, and for costs of suit.

MOORE, LAINE & LEIB,
Att'ys for Pff.

4 STATE OF CALIFORNIA,
County of Santa Barbara, ss:

William Adam, being first duly sworn, upon his oath states that he has read the foregoing, his complaint, and knows the contents thereof, and the same is true of his own knowledge, except as to the matters and things therein stated on his information and belief, and as to those matters that he believes it to be true.

WILLIAM ADAM.

Subscribed and sworn to before me this the 28th day of June, 1877.
[SEAL.] JONAS WESCOALT,
Notary Public.

Filed July 2nd, 1877.

H. P. STONE, *Clerk.*

5 *Certificate of clerk as to correctness of copy of complainant.*

STATE OF CALIFORNIA,
County of Santa Barbara:

COUNTY CLERK'S OFFICE, *Dec. 12th*, 1877.

I, H. P. Stone, county clerk, and ex-officio clerk of the first judicial district court of California, in and for the county of Santa Barbara, do hereby certify that I have compared the foregoing copy of complaint, in the case of William Adam et al. vs. J. R. Norris et als. and of the endorsements thereupon, with the original records of the same remaining in this office, and that the same are correct transcripts therefrom and of the whole of said original records.

Witness my hand and the seal of said court this twelfth day of December, A. D. 1877.
[SEAL.]

H. P. STONE, *Clerk*,
By JOHN JANSSENT,
Deputy Clerk.

(Endorsed:) Complaint. Filed 19 December, 1877. L. S. B. Sawyer, clerk.

6 *Affidavit of service of summons.*

District court of the first judicial district of the State of California, in and for the county of Santa Barbara.

WILLIAM ADAM ET AL., PLAINTIFFS,
against
JOHN R. NORRIS ET ALS., DEFENDANTS.

N. H. Rose, being duly sworn, says that he is over the age of eighteen years, and that he is not a party to the above-entitled action, and that he received the annexed summons on the 14th day of July, A. D. 1877, and that he personally served the same on the 14th day of July, A. D. 1877, upon T. B. Jamison, being one of the defendants named in said summons, by delivering to T. B. Jamison, said defendant, personally, in the county of Santa Barbara, a copy of said summons and a certified copy of the complaint in the action named in said summons attached to said copy of summons. The affiant further says that he personally served the said summons on the 14th day of July, A. D. 1877, upon J. R. Triplett, J. H. Rice, T. S. Brown, James Drum, and
7 Calvin Drum, being also defendants named in said summons, by delivering to each of the said defendants personally, in the county of Santa Barbara, a copy of said summons. The affiant further says that he personally served said summons on the 16th day of July, A. D. 1877, upon M. V. Robbins, A. J. Triplett, and Thomas J. Martin, they being also defendants named in said summons, by delivering to each of the said defendants personally, in the county of Santa Barbara, a copy of said summons. The affiant further says that he personally served said summons on the 18th day of July, A. D. 1877, upon John R. Norris, he being also one of the defendants named in said summons, by delivering to John R. Norris, said defendant, personally, in the county of Santa Barbara, a copy of said summons. The affiant further says that he personally served said summons on the 19th day July, A. D. 1877, upon Thomas Gormley, he being also one of the defendants named in said summons, by delivering to Thomas Gormley, said defendant, personally, in the county of Santa Barbara, a copy of said summons. The affiant further says that John Doe, Richard Roe, John Styles,
8 Richard Styles, John Den, Richard Fen, and Theodore Le Roy, could not be found by this affiant in the county of Santa Barbara. The affiant further says that M. V. Robbins is the true name of defendant called Van Robins in said summons, and that John Doe, Richard Roe, John Styles, Richard Styles, John Den, and Richard Fen, have no existance, and are mythical.

J. HOFFMAN,
Constable,
P'r A. H. ROSS, *Deputy.*

Sworn and subscribed to before me this 25th day of July, A. D. 1877.
JOHN DUNBAR,
Justice of the Peace in said County.

9 *Summons.*

In the district court of the first judicial district of the State of California, in and for the county of Santa Barbara.

WILLIAM ADAM & J. L. SHUMAN, PLAINTIFFS,
vs.
JOHN R. NORRIS, VAN ROBINS, JAMES R. TRIPLETT, Calvin Drum, T. S. Brown, James Drum, Thomas Martin, John H. Rice, Thomas Gormley, T. B. Jamison, Theodore LeRoy, John Doe, Richard Roe, John Styles, Richard Styles, John Den, and Richard Fen, defendants.

Action brought in the district court of the first judicial district of the State of California, in and for the county of Santa Barbara, and the complaint filed in said county of Santa Barbara, in the office of the clerk of said district court.

The people of the State of California send greeting to John R.
10 Norris, Van Robins, James R. Triplett, A. J. Triplett, Calvin Drum, T. S. Brown, James Drum, Thomas Martin, John H. Rice, Thomas Gormley, T. B. Jamison, Theodore Le Roy, John Doe, Richard Roe, John Styles, Richard Styles, John Den, and Richard Fen, defendant:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the district court of the first judicial district of the State of California, in and for the county of Santa Barbara, and to answer the complaint filed therein within ten days (inclusive of the day of service) after the service on you of this summons, if served within this county, or, if served out of this county, but in this district, within twenty days; otherwise, within forty days, or judgment by default will be taken against you, according to the prayer of said complaint.

The said action is brought to obtain judgment against you for the possession of the premises described in the complaint herein, for ten thousand dollars damages for the wrongful entry upon the lands,
11 together with three dollars per acre per annum for the value of the use and occupation of said lands, and for costs of suit, as will appear from the complaint herein, and to which reference is hereby made.

And you are hereby notified that if you fail to appear and answer the said complaint as above required, the said plaintiffs will apply to the court for the relief demanded in the prayer of his complaint.

Given under my hand and the seal of the district court of the first judicial district of the State of California, in and for the county of Santa Barbara, this second day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] H. P. STONE, *Clerk.*

(Endorsed:)

12 *Certificate of clerk as to correctness of copy of summons.*

STATE OF CALIFORNIA,
County of Santa Barbara:

COUNTY CLERK'S OFFICE, *Dec. 12th*, 1877.

I, H. P. Stone, county clerk and ex officio clerk of the first judicial district court of California, in and for the county of Santa Barbara, do hereby certify that I have compared the foregoing copy of summons and affidavit of service of summons in the cause of William Adam et al. vs. John R. Norris et als., and of the endorsements thereupon, with the original records of the same remaining in this office, and that the same are correct transcripts therefrom, and of the whole of said original records.

Witness my hand and the seal of said court this twelfth day of December, A. D. 1877.

H. P. STONE, *Clerk*,
By JOHN JANSSENT,
Deputy Clerk.

13 *Summons.*

In the district court of the first judicial district of the State of California, in and for the county of Santa Barbara.

WILLIAM ADAM & J. L. SHUMAN, PLAINTIFF,
vs.
JOHN R. NORRIS, VAN ROBINS, JAMES R. Triplett, A. J. Triplett, Calvin Drum, T. S. Brown, James Drum, Thomas Martin, John H. Rice, Thomas Gormley, T. B. Jamison, Theodore Le Roy, John Doe, Richard Roe, John Styles, Richard Styles, John Den, and Richard Fen, defendants.

Action brought in the district court of the first judicial district of the State of California in and for the county of Santa Barbara, and the complaint filed in said county of Santa Barbara, in the office of the clerk of said district court.

The people of the State of California send greeting to John R.
14 Norris, Van Robins, James R. Triplett, A. J. Triplett, Calvin Drum, T. S. Brown, James Drum, Thomas Martin, John H. Rice, Thomas Gormley, T. B. Jamison, Theodore Le Roy, John Doe, Richard Roe, John Styles, Richard Styles, John Den, and Richard Fen, defendants:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the district court of the first judicial district of the State of California, in and for the county of Santa Barbara, and to answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons, if served within this county; or, if served out of this county, but in this district, within twenty days; otherwise, within forty days, or judgment by default will be taken against you, according to the prayer of said complaint. The said action is brought to obtain judgment against you for the possession of the premises described in the complaint
15 herein for ten thousand dollars damages for the wrongful entry

upon the lands, together with three dollars per acre per annum for the value of the use and occupation of said lands and for costs of suit, as will appear from the complaint herein, and to which reference is hereby made.

And you are hereby notified that if you fail to appear and answer the said complaint, as above required, the said plaintiff will apply to the court for the relief demanded in the prayer of their complaint.

Given under my hand and the seal of the district court of the first judicial district of California in and for the county of Santa Barbara this second day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] H. P. STONE, *Clerk.*

(Endorsed:)

16 *Sheriff's return annexed to summons.*

OFFICE OF THE SHERIFF OF THE
COUNTY OF SANTA BARBARA.

I hereby certify that I received the within summons on the 12th day of July, A. D. 1877, and personally served the same on the 13th day of July, A. D. 1877, Theodore Le Roy, one of the therein-named defendants, being the defendant named in said summons, by delivering to said defendant, personally, in the city and county of San Francisco, a copy of said summons, and a true and correct copy of the complaint in the action named in said summons, attached to said copy of summons.

Dated this 13th day of July, A. D. 1877.

M. NUNAN, *Sheriff,*
By J. McKEE,
Deputy Sheriff.

17 *Certificate of cl'k to certified copy of summons.*

STATE OF CALIFORNIA,
County of Santa Barbara :

COUNTY CLERK'S OFFICE, *Dec. 12th*, 1877.

I, H. P. Stone, county clerk and ex officio clerk of the first judicial district court of California, in and for the county of Santa Barbara, do hereby certify that I have compared the foregoing copy of summons and affidavit of service of summons in the cause of William Adam et al. vs. John R. Norris et als., and of the endorsements thereupon, with the original records of the same remaining in this office ; and that the same are correct transcripts therefrom, and of the whole of said original records.

Witness my hand and the seal of said court this twelfth day of December, A. D. 1877.

[SEAL.]

H. P. STONE, *Clerk,*
By JOHN JANSSENT,
Deputy Clerk.

Filed 19 Dec., 1877.

L. S. B. SAWYER, *Clerk.*

18 *Answer.*

In the circuit court of the United States, ninth circuit, district of California.

WILLIAM ADAM & J. L. SCHUMAN, PLAINTIFFS,
vs.
JOHN R. NORRIS, VAN ROBINS, JAMES R. TRIPLETT, A. J. Triplett, Calvin Drum, T. S. Brown, James Drum, Thomas Martin, John H. Rice, Thomas Gromley, T. B. Jamison, Theodore Le Roy, John Doe, Richard Roe, John Styles, Richard Styles, John Den, and Richard Fen.

The said defendants, in the district court of the first judicial
19 district of the State of California, in and for the county of Santa Barbara, filed their petition, setting forth that this is a suit of a civil nature; that the matter in dispute exceeds, exclusive of costs, the sum and value of five hundred dollars, and arises under the laws of the United States and the treaty made with the Republic of Mexico under the authority of the United States, usually known and distinguished as the treaty of Guadalupe Hidalgo.

That in this suit there is a controversy between citizens of the State and a citizen of a foreign state, to wit, of the Republic of France; that the defendant, Theodore Le Roy is a citizen of the Republic of France, resident in the city and county of San Francisco; that the plaintiffs are citizens of the United States, and of this State, and residents of this district; and that the defendant, Le Roy, claims to be the owner of the land described in the complaint, and the other defendants are his tenants; which allegations of the said petition are true and are here again alleged; and with said petition presented his bond as re-
20 quired by the terms of the act of Congress passed March 3, 1875, entitled an act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes; and in accordance with the conditions of the said bond and of the terms of said act have filed in this court a copy of the record in such suit.

Now by their attorney, Benjamin S. Brooks, come and answering to the complaint of said plaintiffs—

First. They deny each and every allegation of the said complaint, generally and specifically.

Second. They deny that on the first day of June, 1877, the said plaintiffs were, or at any time since have been, or now are the owners or entitled to the possession of all that certain piece, parcel, or tract of land described in the complaint, or that there is any such tract of land or that the same is a part of the rancho known as the Punta de la Laguna; they further deny that afterwards or on the second day of June, 1876, said defendants entered into or took possession of the whole or any
21 part of said premises or ousted or ejected the plaintiffs therefrom, or that they do now or ever since said 2nd day of June, 1876, have unlawfully or wrongfully withheld the possession of said land and premises from the plaintiffs to their damage in the sum of ten thousand dollars or any other sum, and they deny that the value of the use and occupation of said land is three dollars per acre per year or any more than one dollar per acre.

Third. And for a further answer defendants say that the said Theo-

dore Le Roy is the owner of the rancho Guadalupe, of which the premises described in the complaint, or intended to be, form a part; that said rancho was granted by the Republic of Mexico and confirmed and patented by the United States to Diego Olivera and Theodora Arellanes; that said grant and patent are severally older than the grant and patent of the rancho Punta de la Laguna, under which the plaintiffs claim title.

B. S. BROOKS,
Att'y for Def'ts.

Filed 26 Nov., 1877..

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
D'p'y Cl'k.

22 *Answer.*

In the circuit court of the United States, ninth circuit district of California.

WILLIAM ADAM AND J. L. SHUMAN, PLAINTIFFS, *vs.* JOHN R. NORRIS, VAN ROBINS, JAMES R. TRIPLETT, A. J. TRIPLETT, Calvin Drum, T. S. Brown, James Drum, Thomas Martin, John H. Rice, Thomas Gormley, T. B. Jamison, Theodore Le Roy, John Doe, Richard Roe, John Styles, Richard Styles, John Den, and Richard Fen, defendants.	At law.

The said defendants, in the district court of the first judicial district of the State of California, in and for the county of Santa Barbara, filed their petition, setting forth that this is a suit of a civil nature; that the matter in dispute exceeds, exclusive of costs, the sum and value of five hundred dollars, and arises under the laws of the United States and the treaty made with the Republic of Mexico under the authority of the United States, usually known and distinguished as the treaty of
23 Guadalupe Hidalgo; that in this suit there is a controversy between citizens of this State and a citizen of a foreign state, to wit, of the Republic of France; that the defendant, Theodore Le Roy, is a citizen of the Republic of France, resident in the city and county of San Francisco; that the plaintiffs are citizens of the United States and of this State, and residents of this district, and that the defendant Le Roy claims to be the owner of the land described in the complaint and the other defendants are his tenants, which allegations of the said petition are true and here again alleged, and the said petitioner presented his bond as required by the terms of the act of Congress passed March 3d, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes," and in accordance with the conditions of the said bond and of the terms of said act have filed in this court a copy of the record in such suit.

Now, by their attorney, Benjamin S. Brooks, come and answer-
24 ing to the complaint of the said plaintiffs—

They deny that on the first day of June, 1877, the said plaintiffs were, or at any time since have been, or now are the owners or entitled to the possession of all that certain piece, parcel or tract of land described

in the complaint, or that there is any such tract of land in the rancho Punta de la Laguna, or that the tract of land included in the metes and bounds in said complaint is a part of the rancho known as the Punta de la Laguna.

They further deny that afterwards, or on the second day of June, 1876, said defendants entered into or took possession of the whole or any part of said premises, or ousted or ejected the plaintiffs therefrom, or that they do now, or ever since the 2nd day of June, 1876, have unlawfully or wrongfully withheld the possession of said land and premises from the plaintiffs to their damage in the sum of ten thousand dollars, or any other sum, and they deny that the value of the use and occupation of said land is three dollars per acre per year, or any more than one
25 dollar and a half per acre.

And for a further answer defendants say that the said Theodore Le Roy is the owner of the Rancho Guadalupe, of which the premises described in the complaint, or intended to be, form a part; that said rancho was granted by the Republic of Mexico and confirmed and patented by the United States to Diego Olivera and Teodoro Arellanes; that said grant and patent are severally older than the grant and patent of the rancho Punta de la Laguna, under which the plaintiffs claim title.

B. S. BROOKS,
Att'y for Def'ts.

DISTRICT OF CALIFORNIA,
San Francisco, ss:

Theodore Le Roy, being duly sworn, deposes and says that he is one of the defendants above named; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

Subscribed and sworn to before me this 1st day of April, A. D. 1878.

JAS. F. O'BEIRNE,
Comm. of U. S. Cir. Court.

Filed Apr. 1st, 1877.

L. S. B. SAWYER, *Clk.*

Refiled Apr. 2, 1878.

L. S. B. SAWYER, *Clerk,*
By J. F. O'BEIRNE,
Dep'y Clerk.

26 *Order of dismissal of action as to certain def'ts.*

At a stated term of the circuit court of the United States of America for the District of California, held in the court room in the city and county of San Francisco, on Monday, the 8th day of April, in the year of our Lord one thousand eight hundred and seventy-eight—

Present, the honorable Lorenzo Sawyer, circuit judge—

WM. ADAM ET AL. vs. J. R. NORRIS ET AL. } No. —.

This cause coming on to be heard this day, T. E. Laine, esq., and S. F. Leib, esq., appearing on behalf of plaintiff, and B. S. Brooks, esq., on behalf of defendants, the following named persons were sworn and ex-

amined as witnesses on behalf of the plaintiff: J. L. Sherman and Adolf Steinbach; thereupon documentary evidence was introduced on behalf of plaintiffs. Tobias B. Jamison was then sworn and examined as a witness on behalf of plaintiffs. On motion of F. E. Laine, esq., on behalf of plaintiffs, it is ordered that the complaint herein be dis-
27 missed without prejudice as to John Doe, Richard Roe, John Styles, Richard Styles, John Den and Richard Fen. Thereupon documentory evidence was offered on behalf of defendant, and Adolf Steinbach was sworn and examined as a witness on behalf of defendant. Thereupon Tobias B. Jamison was recalled as a witness on behalf of the plaintiffs in rebuttal. Ordered that the further trial of this cause be continued to to-morrow.

I hereby certify that the foregoing is a full, true and correct copy of an original order made by said circuit court and entered upon its minutes in the above entitled action.

Attest my hand and seal of said circuit court this 9th day of September, A. D. 1878.

L. S. B. SAWYER, *Clerk.*

[SEAL.] J. F. O'BEIRNE, *Deputy Clerk.*

28 *Findings.*

In the circuit court of the United States of the ninth judicial circuit in and for the district of California.

WILLIAM ADAM ET AL. *vs.* JOHN R. NORRIS ET AL. } Findings.

A jury having been waived by a stipulation of counsel for the respective parties duly filed, this cause came on to be tried by the court without a jury on the 8th, 9th, and 29th days of April, A. D. 1878, and after hearing the testimony, and the arguments of counsel, the court, being sufficiently advised, now finds as follows:

I. That at the commencement of this action, and ever since the second day of June, 1876, the following named defendants, J. R. Norris, Van Robins, James Triplett, A. J. Triplett, Calvin Drum, T. S. Brown, James Drum, Thomas Martin, John H. Rice, Thomas Gromley, T. B. Jamison and Theodore Le Roy were and they have ever since been
29 and still are in possession of the premises described in the complaint claiming title adversely to the plaintiffs. The said Theodore Le Roy claiming title as owner under the patent of the United States, dated March 1st, 1870, hereinafter mentioned, and the other defendants as tenants of said Le Roy.

II. That the value of the use and occupation of said premises since said second day of June, 1876, to the present time is one dollar and fifty cents per acre per annum, and there are in said tract five thousand one hundred acres of land.

III. That the Mexican Nation on the 21st day of March, 1840, granted to Teodoro Arrellanes and Diego Olivera, the rancho "Guadalupe;" that such proceedings were had under the act of Congress of March 3, 1851, to ascertain and settle the private land claims in the State of California, that the claims of said grantees to said lands were finally confirmed to them, and in pursuance of said proceedings said rancho
30 was surveyed by the United States authorities.

IV. That afterwards, on the thirtieth day of June, 1866, a patent of the United States, in due and usual form in similar cases, was made out in the office of the Commissioner of the General Land Office of the United States, the seal of said land office affixed thereto, and the said patent was duly signed by the President of the United States, countersigned by the recorder of the General Land Office, and afterwards duly recorded in said land office, in liber 6 of records of patents, at pages 87 to 92. Said patent, except the map or plat (which is omitted,) is in the words and figures following, to wit:

The United States of America, to all to whom these presents shall come, greeting:

Whereas, it appears from a duly authenticated transcript filed in the General Land Office of the United States that, pursuant to the provisions of the act of Congress approved the third day of March,
31 one thousand eight hundred and fifty-one, entitled "An act to ascertain and settle the private land claims in the State of California," Diego Olivera and Teodoro Arrellanes as claimants filed their petition on the 24th day of February, 1852, with the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in which petition they claimed the confirmation of their title to a tract of land called "Guadalupe," situated in the county of San Luis Obispo and State aforesaid; said claim being founded on a Mexican grant to the petitioners made on the 21st day of March, 1840, by Juan B. Alvarado, then governor of California, and whereas the board of land commissioners aforesaid on the 6th of December, 1853, rendered a decree of confirmation in favor of the claimants, and the said decree or decision having been carried by appeal to the district court of the United States for the southern
32 district of California, the said district court, at a stated term, May 12th, 1857, in the cause entitled "Diego Olivera and Teodoro Arrellanes, appellees, vs. The United States, appellants," ordered, adjudged, and decreed that the claim of the said appellees is a valid claim, and that said claim is hereby confirmed, to a certain tract of land known by the name of "Guadalupe." Whereupon the aforesaid court, the Attorney-General of the United States having given notice that appeal will not be prosecuted in this case, "ordered, adjudged, and decreed that the order granting an appeal to the Supreme Court heretofore made in this cause be, and the same is hereby, vacated, and that the claimants have leave to proceed under the decree of this court heretofore rendered in this cause as under a final decree." And whereas, under the 13th section of said act of 3rd March, 1857, there have been presented to the Commissioners of the General Land Office a plat and certificate of the survey of the tract of land confirmed as aforesaid, authenticated on the 25th day of May, 1863, by the signature of the surveyor-general
33 of the public lands in California, which plat and certificate are in the words and figures following, to wit:

UNITED STATES SURVEYOR-GENERAL'S OFFICE.
San Francisco, May 25, 1863.

Under and by virtue of the provisions of the 13 section of the act of Congress of the third of March, 1851, entitled "An act to ascertain and settle private land claims in the State of California," and of the 12th section of the act of Congress approved on the 31st of August, 1852, entitled "An act making appropriation for the civil and diplomatic expenses of the government for the year ending the thirtieth of June,

eighteen hundred and fifty-three, and for other purposes;" and in consequence of the annexed copy of a certificate of the United States district court for the southern district of California having been filed in this office, whereby it appears that the Attorney-General of the United States, having given notice that it was not the intention of the United States to prosecute the appeal from the decision of the said district court by which it recognized and confirmed the title and claim of Diego Olivero et al. to the tract of land designated as "Guadalupe," the
34 said appeal has been vacated, and thereby the said decision in favor of the said Diego Olivera et al. has become final. The said tract has been surveyed in conformity with the grant thereof and the said decision, and I do hereby certify the annexed map to be a true and accurate plat of the said tract of land, as appears by the field notes of the survey thereof made by J. E. Terrill, deputy surveyor, in the month of September, 1860, under the direction of this office, which, having been examined and approved, are now on file therein; and I do further certify that, in accordance with the provisions of the act of Congress approved on the 14th day of June, 1860, entitled "An act to define and regulate the jurisdiction of the district courts of the United States in California in regard to the survey and location of confirmed private land claims," I have caused to be published once a week for four weeks successively in two newspapers, to wit, "The Santa Barbara Gazette," published in the county of Santa Barbara, being the newspaper published nearest to where the said claim is located, the first publication being on the 14th day of February, 1861, and the last on the 17th day of
35 March, 1861; also in the Los Angeles Star, a newspaper published in the city and county of Los Angeles, the first publication being on the 23rd day of February, 1861, and the last on the 16th day of March, 1861, a notice that the said claim had been surveyed and a plat made thereof and approved by me; and I do further certify that the said approved plat of survey was retained in this office during all of said four weeks, and until the expiration thereof subject to inspection; and I do further certify that no order for the return thereof to the United States district court has been served upon me; and I do further certify that, under and by virtue of the said confirmation, survey, decree, and publication, the said Diego Olivera et al. are entitled to a patent from the United States upon the presentation thereof to the General Land Office for the said tract of land, the same being bounded and described as follows, to wit: Beginning at a live-oak tree two feet in diameter on top of range of hills called the Sulphur Hills, marked G. No. 1, and P. L., No. 5; thence, according to the true meridian, the variation of the magnetic needle
36 being fourteen degrees and fifteen minutes east, north sixty-seven degrees and forty-five minutes west, along top of sulphur hills at eighty-four chains and twenty-five links intersects township line between township nine and ten north, range thirty-five west, twenty chains and seventy-five links west of corner to sections thirty-three, thirty-four, three and four. At three hundred and twenty-three chains and seventy-nine links intersects range line between ranges thirty-five and thirty-six west, township ten north, ten chains and eighty-one links north of corner to sections twenty-five, thirty, thirty-one, and thirty-six. At three hundred and nin'ty-five chains descends gradual slope of hills. At four hundred and thirty-one chains and fifty links enter low brush. At five hundred and twenty-nine chains enter sand hills. Five hundred and forty-one chains and nin'ty links to post marked G No. 2, on the sea shore, where a rocky point makes out into the sea about three chains

station. Thence along the sea shore on the slope of sand hills,
37 north fourteen degrees and fifteen minutes east seventy-five chains, to foot of sand hills. Thence along sandy beach at western bank of sand hills one hundred and fifty chains to station. Thence along sandy beach at western base of sand hills, north fifteen degrees and fifteen minutes east seventy-six chains, pass two chains west of lake situated at the mouth of Santa Maria River and Guadalupe slough between lake and sea. At one hundred and twenty chains leave lake one hundred and eighty chains to station. Thence north twelve degrees and thirty minutes east one hundred and twenty chains, to station. Thence north nine degrees and forty-five minutes east seventy chains, to station. Thence north six degrees east sixty chains to witness post marked G No. 7 and W. P. on left bank Arroyo del Oso Flaco sixty-four chains to the mouth of said arroyo station. Thence leaving sea coast and up through the Arroyo del Oso Flaco along the bound'ry of the Rancho Bolsa de Chemisel south seventy-seven degrees and forty-five minutes east. At forty-three chains leave arroyo bearing to the northeast.
38 Thence through the valley; at two hundred and eighty-five chains crosses Arroyo del Oso Flaco thirty-five chains wide; *tow* hundred and nin'ty-three chains ascends table land. Thence along the same three hundred and eighty-two chains and forty links to post marked N No. 4 and G N. 8 station. Thence along the bound'ry of the Nipome Rancho near the edge of bluff bank on table land covered with chemisal, south sixty-six degrees and fifteen minutes east eighty chains, to post marked N No. 3 and G No. 9 station, at place where the road descends from the table land. Thence descending table land south twenty-six degrees and thirty minutes east at five chains enters bottom; at twenty chains enters strip of timber two chains wide, course east and west nin'ty-five chains and eighty links to elder tree at point of the Monte del Oso Flaco marked N No. 2 and P. L. No. 1 and G No. 10 station. Thence along bound'ry of the Rancho Punta de Laguna south eleven degrees, west twenty-three chains, enters sandy bottom and low
39 chemisel, sixty-three chains crosses Santa Maria River, course west sixty-six chains and fifty links intersects township line between townships ten and eleven north, range thirty-five west, seven chains west of corner to section one, two, thirty-five, and thirty-six. At eighty-four chains leave sandy bottom and chemisal and ascend low bluff bank on to plain. At one hundred and forty chains ranch house bears north eighty-nine degrees west. At one hundred and nin'ty chains ranch house bears north seventy-four degrees west four hundred and three chains to mound of stone four hundred and four chains to edge of Guadalupe Lake; four hundred and sixty-one chains across lake, four hundred and sixty-three chains to a stake. At four hundred and nin'ty-three chains ascends the sulphur hills. At five hundred and fifty-six chains intersects township line between township nine and ten north, range thirty-five west, nineteen chains and fifty links west of corner to sections two, three, thirty-four, and thirty-five. Five hundred and sixty-two chains enters oak timber; five hundred and eighty-eight chains to point of beginning, containing thirty-two thousand four hundred
40 and eight acres and three one-hundre'ths of an acre, and being designated upon the plat of public surveys as lot numbered thirty-eight, township nine north, range thirty-five west; lot number thirty-seven, township ten north, range thirty-five west; lot number thirty-seven, township ten north, range thirty-six west; lot number thirty-seven, township eleven north, range thirty-five west, and lot number thirty-seven, township eleven north, range thirty-six west, all of San Bernardino Meridian.

In witness whereof I have hereunto set my hand and affixed the seal of my office this 25th day of May, 1863.

[SEAL.] E. F. BEALE.
U. S. Sur. Gen'l.

Now, know ye that the United States of America, in consideration of the premises and pursuant to the provisions of the act of Congress aforesaid of the 3rd of March, 1851, have given and granted, and by these presents do give and grant, unto the said Diego Olivero and
41 Teodoro Arrellanes, and to their heirs, the tract of land embraced and described in the foregoing survey, but with the stipulation that in virtue of the 15th section of the said act the conformation of this claim and this patent "shall not affect the interests of third persons."

To have and to hold the said tract with the appurtenances unto the said Diego Olivero and Teodoro Arrellanes, and to their heirs and assigns, forever, with the stipulation aforesaid.

In testimony whereof I, Andrew Johnson, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this thirtieth day of June, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the United States the nin'tieth.

By the President.

[SEAL.] ANDREW JOHNSON.
By E. W. D. NEILL,
Secretary.

42 I. N. GRANGER,
Recorder of the General Land Office.

Recorded vol. 6, pages 87, 92.

The said plat contained upon its face the following certificates and indorsements, viz:

"Plat of the Gaudalupe Rancho finally confirmed to Diego Olivero et al., surveyed under instructions from the U. S. surveyor-general, by J. E. Terrill, dep. sur., September, 1860, containing $32{,}408\frac{3}{100}$ acres."

The field notes of the Gaudalupe Rancho from which this plat has been made out have been examined and approved, and are on file in this office.

U. S. surveyor-general's office, San Francisco, California, January 29th, 1861.

J. W. MANDEVILLE,
U. S. Sur. Gen'l Cal'a.

NOTE.—A notice of the approval of this plat of survey has been published in accordance with the act of Congress of June 14th, 1860, in the Los Angeles Star, the first publication thereof being on the 23rd of February, and the last on the 16th of March, 1861, also in the
43 paper nearest the land, being the Santa Barbara Gazette, the first publication thereof being on the 14th of February, 1861, and the last on the 7th of March, 1861.

This plat has remained in this office subject to inspection from the date of approval thereof.

[L. S.] J. W. MANDEVILLE,
U. S. Sur. Gen'l Cal.

A full, true, and correct copy of the original plat on file in this office. U. S. surveyor general's office, San Francisco, California, May 25th, 1863.

E. F. BEALE,
U. S. Sur. Gen'l Cal.

44 V. Afterward, on the 2d day of August, 1866, said patent was transmitted by J. W. Edmunds, Commissioner of the General Land Office, to the United States surveyor-general for California, to be delivered to the holders of said grant, and the receipt of said patent was acknowledged by said surveyor-general on August 27th, 1866.

VI. Upon receiving notice of the making out and forwarding of said patent in the manner aforesaid, John B. Ward, who was at the time the sole owner of said grant of land by purchase, promptly refused to accept the said patent, on the ground that the survey upon which said patent was based was erroneous, and not in accordance with said grant and decree, and that no legal notice of said survey, plat, and approval of said survey had been given, and that the same was for that reason void.

VII. The said Ward presented to the Commissioner of the General Land Office a petition, together with affidavits, and other docu-
45 mentary evidence in the case, which evidence he claimed showed that there had been no legal publication of said notice of said survey made by Terrill, upon which said patent issued, and approved by the surveyor-general; that no legal notice of the said survey and approval had been given, and that the same was erroneous; and, upon said showing, asked that a resurvey be made, and a patent issued upon such new and corrected survey.

VIII. Afterwards, upon the 22d day of October, 1866, J. S. Wilson, then Commissioner of the General Land Office, acting upon said petition and affidavits and papers, sent a communication to the surveyor-general for California, in which, after referring to the said petition and accompanying evidence, he expresses the opinion that the survey is erroneous, and gives the said surveyor-general the following instructions, to wit:

"In view of the foregoing you are hereby instructed—

"1st. To return the undelivered patent transmitted August 2d,
46 1866, for the Guadalupe Rancho.

"2d. Thereupon you will cause notice to be served upon each and all the parties whose interest may be affected by the questions involved, that a resurvey of said rancho has been applied for, and fix a day for the hearing of all parties interested.

"3rd. After such hearing you will determine what is the true locus contemplated by the confirmation, and proceed to make the survey accordingly; which survey must of course be published in accordance with the first section of the act of July, 1864, and retained in your office for ninety days, as required by that act.

"Upon the expiration of the period fixed by law, in which objections may be taken, you will promptly forward all the papers, with your judgment in the matter."

And said patent was accordingly returned to the Commissioner of the General Land Office.

IX. Afterwards a new survey of said grant was made in ac-
47 cordance with the claim of said claimant Ward, and with said instructions, under the direction of the U. S. surveyor-general for the State of California, and duly approved, and such further proceedings were had that on the first day of March, A. D. 1870, a patent of

the United States, in due and usual form in such cases, was made out in the office of the Commissioner of the General Land Office of the United States, in accordance with such survey; the seal of said office was affixed thereto, the signature of the President affixed by J. N. Burritt, his secretary, thereto authorized by law. Said patent was duly countersigned by the recorder of the General Land Office, and duly recorded in said land office in liber vii of records of patents, page 289, and following pages.

X. Said patent, with the exception of the plat, which is omitted, is in the words and figures following, to wit:

The United States of America to all to whom these presents shall come, greeting:

48 Whereas it appears from a duly authenticated transcript filed in the General Land Office of the United States, that pursuant to the provisions of the act of Congress approved the third day of March one thousand eight hundred and fifty-one, entitled "An act to ascertain and settle the private land claims in the State of California," Diego Olivera and Teodoro Arrellanes as claimants filed their petition on the 24th day of February, 1852, with the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in which petition they claimed the confirmation of their title to a tract of land called "Guad'lupe," situated in the then county of San Luis Obispo and State aforesaid, said claim being founded on a Mexican grant to the petitioners, made on the 21st day of March, 1840, by Juan B. Alvarado, then governor of the department of the Californias.

And whereas the board of land commissioners aforesaid on the 6th day of December, 1853, rendered a decree of confirmation in favor of the claimants as follows:

DIEGO OLIVERA & TEODORO ARRELANES
vs.
49 THE UNITED STATES.

In this case on hearing the proofs and allegations it is adjudged by the commission that the claim of the said petitioners is valid, and it is therefore decreed that the same be confirmed. The lands of which confirmation are hereby made are known by the name of "Gaudalupe," and are the same upon which Diego Olivera and Teodoro Arrellanes now reside, and bounded and described as follows, to wit: Beginning at the meganos, which are at the place called the mouth of Arroyo del oso placo, and running east the distance of two and a half leagues to the road which extends to the mesa, where there is a stake; thence running over Hono de la Larga in southerly direction the distance of three leagues to the high part of the Lomas de Azuefre to an oak tree the most easily distinguished; thence running over the same hills in a northwesterly direction the distance of one league and a quarter to the sea-shore, where there is Morritas; thence running over a cañada the distance of two and a half leagues to the place of beginning.

Reference for further description to be had to a map which is a part of document marked A, and filed in this case.

50 Which decree or decision having been taken by appeal to the district court of the United States for the southern district of Cal-

ifornia. the said court, as appears by a duly authenticated transcript on file in the General Land Office in the cause entitled "Diego Olivera, Teodoro Arrellanes, appellees, ads. The United States, appellants," ordered, adjudged and decreed that the claim of the said appellees is a valid claim, and that said claim is hereby confirmed to a certain tract of land known by the name of "Guadalupe," being the same land on which the appellees Diego Olivera and Teodoro Arrellanes now reside; for particular description of said land reference will be had to the map and judicial record of possession on file in the transcript of the record in this case.

And whereas it further appears from a certified transcripton file in the General Land Office that notice having been given by the Attorney-General of the United States that it was not the intention to prosecute the appeal to the Supreme Court of the United States in this case, the aforesaid district court, at its December term, 1856, "Ordered, adjudged and decreed that the order granting an appeal to the
51 Supreme Court heretofore made in this cause be and the same is hereby vacated, and that the claimant have leave to proceed under the decree of this court heretofore rendered in this cause as under a final decree.

And whereas, under the 13th section of said act of 3rd March, 1851, and the supplemental legislation, and in accordance with the proceedings had pursuant to said act and supplemental legislation, there has been deposited in the General Land Office a return with a plat of the survey of the said claim approved on the 29th day of June, 1867, by the United States surveyor general of the State of California, whereby it appears that said claim has been designated as lot numbered thirty-seven in township eleven north of range thirty-six west, lot numbered thirty-seven in township eleven north of range thirty-five west, lot numbered thirty-eight in township ten north, range thirty-four west; lot numbered thirty-seven in township ten north of range thirty-five west; lot numbered thirty-seven in township ten north of range thirty-
52 six west; lot numbered thirty-eight in township nine north of range thirty-four west; and lot numbered thirty-eight in township nine north of range thirty-six west, of the San Bernardino meridian, containing forty-three thousand six hundred and eighty-one acres and eighty five hundre'ths of an acre, situated in the State of California, the plat in the aforesaid return of survey being in the words and figures as follows, to wit:

And whereas there has been deposited in the General Land Office of the United States a certificate, dated 8th January, 1868, from the clerk of the district court of the United States for the district of California, showing that in the cause entitled "The United States vs. Diego Olivera et al," on the 5th day of February, 1857, an order was made by the district court of the U. S. for the southern district of California, in the above entitled case, that the order granting an appeal on behalf of the United States to the Supreme Court of the United States from the decision of the said district court confirming the claim of said
53 Diego Olivera and others to the place called Gaudalupe be vacated, and that the claimants have leave to proceed under the decree of said district court as under a final decree, and that no proceedings have been taken in said cause since said 5th day of February, 1857:

Now know ye. that the United States of America, in consideration of the premises and pursuant to the provisions of the act of Congress aforesaid of 3rd March, 1851, and the legislation supplemental thereto, have

given and granted, and by these presents do give and grant, unto the said Diego Olivera and Teodoro Arrellanes, and to their heirs, the tract of land embraced and described in the foregoing survey, but with the stipulation that in virtue of the 15th section of the said act the confirmation of the said claim and this patent shall not affect the interest of third persons to have and to hold the said tract with appurtenances unto the said Diego Olivera and Teodoro Arrellanes, and to their heirs and assigns forever, with the stipulation aforesaid.

In testimony whereof I, Ulysses S. Grant, President of the
54 United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, this first day of March, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States the ninety fourth.

By the President:

[L. S.]

U. S. GRANT,
By I. W. BURRITT,
Secretary.

J. N. GRANGER,
Recorder of the General Land Office.

Recorded vol. 7, pp. 289 to 293, inclusive.

The plat attached to said patent of 1870 had upon its face the following endorsements, viz:

"Plat of the Gaudalupe Rancho, finally confirmed to Diego Olivera et al., surveyed under instructions from the U. S. surveyor-general by G. H. Thompson, dep. sur., February 1867, containing 43,631 $\frac{85}{100}$ acres."

The field notes of the Gaudalupe Rancho, from which this plat has been made, have been examined and approved, and are on file in this office.

55 U. S. surveyor-general's office, San Francisco, California, June 29th, 1867.

L. UPSON, [L. S.]
U. S. Sur. Gen. Cal.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
March 1st, 1870.

It appearing from the return of the surveyor-general that this survey was advertised for the period and remained without objections in the office of the said surveyor-general for the time stipulated in the act of 1st of July, 1864, U. S. Statutes, vol. 13, page 332, this survey is hereby approved.

Approved March 1st, 1870.

JAS. S. WILSON,
Commissioner of the General Land Office.

XI. That said patent after being recorded was forwarded by J. S. Wilson, then Commissioner of the General Land Office of the United States, by mail to the United States surveyor-general for the State of California, to be delivered to the parties thereto entitled, but
56 before arriving at San Francisco the said Commissioner of the General Land Office by telegraph directed said surveyor-general to return said patent to said Commissioner of the General Land Office, and the same was immediately so returned, and it has ever since re-

mained in the General Land Office. That such action recalling and returning said patent was taken by said Commissioner and said surveyor-general without the knowledge or consent of said patentees or confirmees or any successor or successors thereof.

XII. On May 9th, 1873, the defendant Theodore Le Roy, who was then sole owner of said Gaudalupe Rancho, obtained from Willis Drummond, then Commissioner of the General Land Office, from the records of said office, under the seal of said Land Office and signature of said Drummond, Commissioner, an exemplified copy of said last-mentioned patent, of date March 1st, 1870, which said exemplified copy of said patent was duly recorded, at the request of said Le Roy, in the office of the county recorder of Santa Barbara County in which county the larger portion of said lands embraced in said patent are situated, on March 17th, 1877, in book A of patents, on pages 292 to 303, inclusive, and said exemplified copy was introduced in evidence by the defendants on the trial of this case as evidence of the title of said Le Roy.

57

XIII. On June 12th, 1873, the said first-named patent of date June 30th, 1866, was again transmitted by the Commissioner of the General Land Office to the surveyor-general of California for delivery to the parties in interest, but said patent was not taken by said Le Roy, who was then the sole owner of said grant, and who claimed the said patent of March 1st, 1870, to be the valid patent; but said patent of June 30th, 1866, remained in the custody of the said surveyor-general unaccepted and unclaimed by any party until called for and taken by the parties at the time and under the circumstances hereinafter in the next finding stated, and not otherwise.

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XIV. On October 15th, 1875, said Theodore Le Roy conveyed subdivision No. 108, containing $144\frac{23}{100}$ acres, of said Gaudalupe Rancho, to one Stevens. On August 14, 1873, said Le Roy conveyed lots 13 & 14 of block 7, and lots 13 & 14 of block 14, of said rancho to one Hudson. On October 13th, 1873, said Le Roy conveyed lot 16 in block 7 of said rancho to Hudson. On November 15th, 1873, said Le Roy conveyed the southerly half of subdivision No. 100 to one Rice. The said lots are parts or subdivisions of said rancho Guadalupe, and are embraced in both of said patents, and are no part of the lands in dispute in this action. On the first day of April, A. D. 1877, the owners of said several parcels of land so conveyed by said Le Roy, by their agent, and without the knowledge or consent of said Le Roy, applied for and obtained from the said surveyor general for the State of California the said patent dated June 30th, 1866, and the said patent so obtained was recorded at the request of T. B. Jamison, one of said parties, in the office of the county recorder of said Santa Barbara County, on the 3rd day of April, A. D. 1877, and the said patent was introduced on the trial of this case by the plaintiffs as evidence of an acceptance of said patent by some of the successors in interest of the original grantees in said grant, and as the legal patent to said rancho. This is the only interest either of said parties obtaining and receiving said patent had in either of said grants or patents.

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XV. There was no delivery of either said patents to or acceptance by the respective patentees therein named or their several successors in interest other than such delivery and acceptance as the facts stated in these findings constitute and show.

XVI. The demanded premises occupied by the defendants are outside of the limits of the patent of date of June 30th, A. D. 1868, and

within the limits of the patent of March 1st, A. D. 1870, and the last-named patent includes all the land embraced in the first-named patent.

60 XVII. Said patentees and confirmees prior to February 1st, 1863, conveyed Rancho Gaudalupe to Lewis T. Burton, and to Myles D. Sweeney and Edward Martin. On the fifth of March, 1863, said Sweeney and Martin conveyed the same to Juana M. Estudillo; on February 13th, 1863, said Burton conveyed the same to Juana M. Estudillo, who on August 16, 1864, conveyed the same to John B. Ward, who afterwards, on October 1st, 1870, reconveyed the same to Juana Estudillo, who afterwards, on said October 1st, 1870, conveyed the same to defendant Le Roy, who thereby became seized of all the title acquired by virtue of said patent dated March 1, 1870; that in one of said deeds through which said Le Roy derives title, to wit, a deed from Antonos Arrellanes to Lewis T. Burton, bearing date December 9, 1862, the lands conveyed are described as follows, viz: "All that certain tract of land, farm, or rancho known as the Rancho de Gaudalupe, situated in the county of Santa Barbara, State of California, and bounded by the

61 Rancho de Nipomo, La Laguna, Casmali, and Jesus Maria, and being the same tract granted by Juan B. Alverado, governor of the then department of California, on the 21st day of March, 1840, to Deago Olivera and Teodoro Arrellanes, containing within its boundaries eight square leagues, more or less, in conformity with the final survey thereof by the United States surveyor-general for the State of California.

XVIII. The deed of Lewis T. Burton to Juana M. Estudillo described the rancho as follows:

"The Rancho de Gaudalupe, situated in the said county of Santa Barbara and bounded by the Pacific Ocean, the Rauche de Bolso de Chemisal, the Rancho de Nepoma, the Rancho de Punta de la Laguna, and by a line of Sulphur Hills, containing within its said boundaries thirty-two thousand four hundred and eight acres, in conformity with the final survey thereof by the surveyor-general of the U. S. for

62 the State of California, and by him approved on the 29th day of January, 1861, being the same tract of land heretofore granted to Diego Olivera and Teodoro Arrellanes on the 21st day of March, 1840, and to them finally confirmed by the U. S. district court for the southern district of California."

XIX. The deed of said Sweeney and Martin to Juana M. Estudillo, dated March 5, 1863, describes said land as follows, to wit:

"The rancho or tract of land known as the Gaudalupe Rancho, being the same land which was granted to Diego Olivera and Teodoro Arrellanes by J. B. Alvarado, governor of California, on the twenty-first day of March, A. D. 1840, and which was confirmed to said Diego Olivera and Teodoro Arrellanes by the board of land commissioners to ascertain and settle private land claims in the State of California, on the sixth day of December, A. D. 1853."

63 XX. The deed of Juana M. Estudillo to John B. Ward, of date of August 16th, A. D. 1864, gives the description as follows:

"The rancho or tract of land situated in the county of Santa Barbara, State of California, known as the Gaudalupe Rancho, being the same land which was granted to Diego Olivera and Teodoro Arrellanes by J. B. Alvarado, governor of California, on the 21st day of March, A. D. 1840, and which was confirmed to said Diego Olivera and Teodoro Arrellanes by the board of commissioners to ascertain and settle private land claims in the State of California, on the sixth day of December,

A. D. 1853, and more and particularly described as follows, viz: Commencing at the sand hills (Moganos), which are at the place called the mouth of the Arroyo del Oso Flaco, and running thence eastward the distance of two and one-half (2½) leagues to the road which ascends to the Mesade Nipoma, where there is a stake; thence running
64 over Leeano de Largo in a southerly direction the distance of three leagues to the high part of the Sulphur Hills (Lomas de Azufra), to an oak tree the most easily distinguished; thence running over the same hills in a northerly direction the distance of one league and a quarter (1¼) to the sea-shore, where there is a morito: and thence running over a canada the distance of two and one-half (2½) leagues to the place of beginning; and the same land which is described in the map or plan of survey of said Gaudalupe Rancho made by J. E. Terrill in September, A. D. 1860, and now on file in the office of the United States surveyor-general for California."

XXI. The deed from Juana M. Estudillo to the plaintiff describes the land as follows: That certain rancho or tract of land situated in the county of Santa Barbara, State of California, known as the Gau-
65 dalupe Rancho, being the same land which was granted to Diego Olivera and Teodoro Arrellanes by the Mexican Government.

XXII. The notice which appears by the records of the office of the surveyor general to have been published in the Los Angeles Star and Santa Barbara Gazette, and which was the notice referred to and intended in the certificate of the surveyor general recited in the patent of June 30, 1866, there being no other notice, is in the words and figures following, to wit:

SAN FRANCISCO, *February 12th*, 1861.

In compliance with the first section of an act of Congress approved June 14, 1860, regulating surveys of private land claims surveyed in pursuance of the thirteenth section of an act entitled "An act to ascertain and settle private land claims in the State of California," approved 3rd March, 1851, have been examined and approved by me.

Name of rancho, Guadalupe.

Confirmed, Diego Olivera et al.

* * * * * * *

66 The plats will be retained in this office subject to inspection for four weeks from the date of this publication.

JAMES M. MANDEVILLE,
U. S. Surveyor General.

XXIII. The affidavits upon which the Commissioner of the General Land Office acted in recalling the said patent of June 30th, 1866, and ordering a new survey, showed that the Santa Barbara Gazette, in which said notice was certified by the surveyor general to have been published, although purporting to be published at Santa Barbara, was in fact, for reasons of economy, printed at San Francisco, where the matter was also set up, and immediately after printing forwarded to Santa Barbara for distribution; that they usually took 3 or 4 days to reach Santa Barbara; and one affiant stated that he was a resident of Santa Barbara during the months of January and February, 1861, and a subscriber of said paper, and that the receipt of said paper in Santa Bar-
67 bara County was frequently delayed from one to four weeks after its publication before reaching its subscribers. The affidavits do not show the dates at which said paper was printed at San Francisco,

or at what dates the particular numbers containing said notice were distributed at Santa Barbara.

XXIV. That the Mexican nation, on the twenty-ninth day of December, 1844, granted to Luis Arrellanes and Eusides Miguel Ortega the Rancho La Punta de la Laguna; that such proceedings were had under the act of Congress of March 3rd, 1851, to ascertain and settle private land claims in the State of California, that the claim of said grantees to said rancho was finally confirmed to them to the extent of six square leagues, and in pursuance of said proceeding said rancho was surveyed by the United States authorities, said survey confirmed, and a patent, in due and the usual form in such cases, was issued to the parties thereto entitled on the second day of October, 1873. Said patent, except the plat, which is omitted, is in the words and figures following, to wit:

68 The United States of America to all to whom thes' presents shall come, greeting:

Whereas it appears from a duly authenticated transcript filed in the General Land Office of the United States, that pursuant to the provisions of the act of Congress, approved the third day af March, one thousand eight hundred and fifty-one, entitled, "An act to ascertain and settle the private land claims in the State of California," Luis Arrellanes and Eusides Miguel Ortega, as claimants, filed their petition on the 23rd day of March, A. D. 1852, with the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in which petition they claimed the confirmation of their title to a tract of land known by the name of La Punta de la Laguna, situate in the former jurisdiction of Santa Barbara and State aforesaid, said claim being founded on a Mexican grant to the petitioners, made on the twenty-six day of December, one thousand eight hundred and forty-four, by Manuel Micheltorena, then governor of the department of the Californias; and whereas the board of land commissioners aforesaid, on the 2d day of May, A. D. 1854, ren-
69 dered a decree of confirmation in favor of the claimants, which decree or decision having been taken by appeal to the district court of the United States for the southern district of California, the said district court, in the cause entitled "Luis Arrellanes and Ensisudio Miguel Ortega, appellees, ads. The United States, appellants," rendered its decision as follows, to wit: It is ordered, adjudged, and decreed that the decision of the said commissioners be, and the same is hereby, affirmed; and it is fu'ther adjudged and decreed that the claims of the above-named appellees is good and valid, and the same is hereby confirmed to them to the extent of six square leagues and no more, within the boundaries described in the grant and the map of which the grant refers, to wit, the rancho of Don Guillermo Dana, Don Juan Wilson, the Arrellanes, Tomas Olivera and Guellermo Hartwell, which more fully appears in the act of judicial possession, as follows: Commencing on the top of the Lomas de la Larga and running northerly over the plain, crossing the middle of the Laguna, the distance of ten thousand two hundred varas, to the Cuchillo de Nipomi, where two roads ascend, and where a stake was driven as a boundary; thence running seven thousand seven hundred and fifty varas to the east, by the plain and slope
70 of the hills, to a point in front of the mouth of the Canada de Luez; thence running southerly over the plain eight thousand seven hundred and fifty varas to a point opposite the corral of San Marcos; thence running northwesterly along the ridge of the Serro de San Marcos nine thousand five hundred varas to the place of beginning,

provided, that should the quantity of land within said boundaries be less than six square leagues, then confirmation is hereby made of such less quantity.

And thereafter the Attorney-General of the United States having given notice that appeal in the cause entitled "The United States, appellants, vs. Luis Arrellanes et al., appellees," would not be prosecuted to the Supreme Court of the United States, the aforesaid district court ordered, adjudged, and decreed that the order granting an appeal to the Supreme Court, heretofore made in this cause, be, and the same is hereby, vacated, and that the claimant have leave to proceed under the decree of this court heretofore rendered in this cause as under a final decree, whereby the proceedings of court upon title become final.

And whereas under the 13th section of said act of 3rd March, 1851, and the supplemental legislation, and in accordance with the pro-
71 ceedings had pursuant to said act and supplemental legislation, there has been deposited in the General Land Office a return, with the descriptive notes, certificate of advertisement, and plat of survey of the said claim, confirmed as aforesaid, authenticated by the signature of the United States surveyor-general for the State of California, which descriptive notes, certificate of advertisement, and plat of survey are in the words and figures as follows, to wit: Beginning at an elder tree marked P. L., No. 1, standing in the Puerta del Monte del Oso Felaco; thence, the variation of the magnetic needle being fourteen degrees and fifteen minutes east, in the direction of the mouth of Canada del Passo, over valley-land, south eighty-five degrees and thirty minutes east; at seventy-four chains and forty links intersects range line between ranges thirty-four and thirty-five west, township eleven north; nineteen chains and thirty-five links south of corner to sections twenty-five, thirty, thirty-one, and thirty-six; at two hundred and fifty-two chains and eighty-six links crosses Santa Maria River bed-course west, at two hundred and seventy-chains a post marked P. L., No. 2, on left bank of the Santa Maria River station; thence crossing the plain south; at forty-six chains and twenty-five links intersects township line between
72 township ten and eleven north, range thirty-four west; forty-three chains and fifty links west of corner to sections three, four, thirty-three, and thirty-four; at five hundred and twenty-four chains and twenty-eight links intersects township line between township nine and ten north, range thirty-four west; forty-two chains and ninety links west of corner to sections three, four, thirty-three, and thirty four; at six hundred and eighty-five chains enters rolling hills; at seven hundred and seventy-five chains enters Cajon de Todos Santos; at eight hundred and fourteen chains and fifty links intersect line of the rancho Todos Santos at a post, at point of intersection, marked P. L., No. 3 station; thence north eighty-three degrees and fifteen minutes west; at eight chains leaves the Cajon de Todas Santos; thence over rolling timbered hills, course northwest and southeast; at two hundred and two chains and twenty links intersects range line between ranges thirty-four and thirty-five west, township nine north; twenty-two chains south of corner to section thirteen, eighteen, nineteen, and twenty-four; at two hundred and fifty six chains and seventy links enter Canada and crosses
73 road, course northeast and southwest; at three hundred chains and forty links a post marked T. S. No. 4, and R. S. No. 4 on east of low hills station; thence north twenty-one degrees west; at forty chains leave Canada course northwest and southeast and southwestern slope of Sulphur Hills; at one hundred and fourteen chains crosses gulch, course southwest and ascend; at two hundred chains top of Sulphur

Hills, and at two hundred and thirty-eight chains a live oak tree two feet in diameter, marked P. L., No. 5 station; thence north eleven degrees east, descending through oak timber; at twenty-six chains leaves timber; at thirty-two chains intersect township line between township nine and ten north, range thirty-five west; nineteen chains and fifty links west of corner to sections two, three, thirty-four, and thirty-five; at ninety-five chains bottom of hill; thence crossing plain; at one hundred twenty-five chains a stake two chains from the edge of Gaudalupe Lake; thence an offset around the Gaudalupe Lake, north seventy-nine degrees, west forty eight chains; thence north eleven degrees, east sixty chains, passing point of lake; thence south seventy-nine degrees, east forty-eight chains, to stone mound one chain from the edge of the lake;
74 thence on true line crossing the plain; at five hundred and four chains descend low bluff bank into sandy bottom; at five hundred and twenty-one chains and fifty links intersects township line between township ten and eleven north, range thirty-five west; seven chains west of corner to sections one, two, thirty-five, and thirty-six; at five hundred and twenty-five chains Santa Maria River; course west, and five hundred and sixty five chains leave sand bottom; at five hundred and eighty-eight chains to the place of beginning—containing twenty-six thousand six hundred and forty-eight acres and forty-two hundredths of an acre, and designated upon the plat of public surveys as lot numbered thirty-nine, township nine north, R. thirty-four west; lot numbered thirty-eight, township ten, north, range thirty-four west; lot numbered forty, township eleven north, range thirty four west; lot numbered forty, township eleven north, range thirty-five west; lot numbered thirty-eight, township ten north, range thirty-five west; lot numbered forty-one, township nine north, range thirty-five west, all of the San Bernardino base and meridian.

75 In witness whereof I have hereunto signed my name officially, and affixed my seal of office, at the city of San Francisco, this 22nd day of July, A. D. 1873.

[SEAL.]

J. R. HARDENBERGH,
U. S. Surveyor-General for California.

OFFICE OF THE SURVEYOR-GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, J. Mandeville, United States surveyor-general for the State of California, do hereby certify that the Rancho Punta de la Laguna, confirmed to L. Arrellanes et al., has been surveyed by this office, and that the survey and plat was approved by the U. S. surveyor-general on the twenty-ninth day of January, 1861; that I have caused to be published, once a week for four weeks successively, in two newspapers, to wit, the Santa Barbara Gazette, published in the county of Santa Barbara, State of California, being the newspaper published nearest to where the said rancho is located, the first publication being on the 14th day of February, 1861, and the last on the 7th day of March, 1861; also in the Los Angeles Star, a newspaper published in the city and county of Los Angeles, State aforesaid, the first publication being on the
76 twenty-third day of Feb., 1861, and the last on the 16th day of March, 1861, a notice that the said land had been surveyed and a plat made thereof, and the survey and plat approved by me. And I do further certify that the said survey and plat were retained in my office during all of said four weeks, and until the expiration thereof, subject to inspection; and I further certify that no order for the return thereof to the U. S. district court has been served upon me.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed at the city, of San Francisco, this 31st day of May, 1861.

J. W. MANDEVILLE,
U. S. Surveyor-General for California.

OFFICE OF THE SURVEYOR-GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, J. R. Hardenberg, surveyor-general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and
77 Mexican Territory or Department of Upper California, as also the papers of the late board of commissioners to ascertain and settle private land claims in California, by virtue of the power vested in me by law, do hereby certify that the preceeding and hereunto-annexed page of paper numbered from one to 1, inclusive, exhibit a true, full, and correct copy of the original record of the advertisement of the Rancho Purta de la Laguna, L. Arrellanes et al., confirmees, as the same remains of record in my office in book vol. 1, certificate of advertisement surveys.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this seventh day of August, 1873.

J. R. HARDENBERGH,
U. S. Surveyor-General for California.

And whereas there has been deposited in the General Land Office a certificate dated the 9th day of August, A. D. 1873, from the clerk of the district court of the United States for the district of California, certifying "that since the filing of said order vacating appeal, no
78 other or further proceedings have been had in said cause, as appears by the papers on file therein and the docket entries thereof":

Now, know ye that the United States of America, in consideration of the premises and pursuant to the provisions of the act of Congress aforesaid of 3d March, 1851, and the legislation supplemental thereto, have given and granted, and by these presents do give and grant, unto the said Luis Arrellanes et al. and to their heirs, the tract of land embraced and described in the foregoing survey; but with the stipulation that in virtue of the 15 section of the said act, neither the confirmation of this said claim nor this patent shall affect the interest of third persons to have and to hold the said tract with the appurtenances unto the said Luis Arrellanes et al., and their heirs and assigns forever, with the stipulation aforesaid.

In testimony whereof, I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, this second
79 day of October, in the year of our Lord one thousand eight hundred and seventy-three and of the Independence of the United States the ninety-eighth.

By the President:

[SEAL.]

U. S. GRANT,
By S. D. WILLIAMSON,
Secretary.

E. K. LIPPINCOTT,
Recorder of the General Land Office.

Recorded vol. 8, pp. 420 to 427, inclusive.

The plat attached to said last named patent has the following endorsement on its face, viz:

Plat of the Rancho de la Laguna, finally confirmed to L. Arrellanes et al., surveyed under instructions from the U. S. surveyor general by J. E. Terrill, dep. sur., September, 1860, containing $26{,}648\frac{43}{100}$ acres. The field notes of the Rancho Punta de la Laguna, from which this plat has been made out, have been examined and approved, and are on file in this office. San Francisco, California, January 29th, 1861.

J. W. MANDEVILLE,
U. S. Surveyor-Gen. Cal.

NOTE.—Notice of the date of approval of this plat and its retention in office for four weeks subject to inspection was published from
80 the 14th of February, 1861, to the 16th of March, 1861, in pursuance of the act of Congress of June 14th, 1860.

J. W. MANDEVILLE,
U. S. Sur. Gen. Cal.

A full, true, and correct copy of the original plat on file in this office. San Francisco, California, July 22nd, 1873.

[L. S.] J. R. HARDENBERGH,
U. S. Sur. Gen. Cal.

XXV. The said patent to the Rancho La Punta de la Laguna, described in the last preceeding finding, embraces within its calls the lands in controversy in this suit, and the plaintiffs by mesne conveyances, in due form, on January 26, 1874, became vested with and posses'ed of one undevided sixth of all the title and interest in the lands described in said patent, including the lands in controversy, which vested in the patentees by virtue of said patent; and they have ever since continued to be seized and possessed of the interest so conveyed to them. The deed from said Lui Arrellanes to the plaintiff's immediate grantor was executed and delivered on December 23, 1862. The western line
81 of the land described in said patent coincides with the eastern line of the lands described in said patent to the said Gaudalupe Rancho, dated June 30, 1866.

XXVI. J. M. Edmonds was Commissioner of the General Land Office from March 18, 1861, to August 31, 1866, and J. S. Wilson was Commissioner of said Land Office from September 1, 1866, to February 4, 1871.

XXVII. That heretofore, on the 19th day of December, A. D. 1873, Theodore Le Roy, who is one of the defendants herein, and of whom the other real defendants, that is to say, all served with summons, are tenants (and as to the others sued by ficticious names, the suit was dismissed at the trial), filed his complaint in this court against Tobias B. Jamison, Daniel Coiner, John H. Rice, Vining Crawford, S. H. Keen, John Hudson, J. K. Triplett, Isam Wheelis, W. H. Stevens, José O. P. Vidal, Thomas Gormley, W. Lewis, A. Conrad, J. Keen, W. L. Stevens, William Lamb, P. Guthrie, J. Moor, Francisco Vidal, and Patrick Moore, and alleged in said complaint his title and seizin in fee to
82 the same tract of land which is described in the complaint in this action, and his right to the possession thereof, and that said defendants had unlawfully entered thereon, and had unlawfully and wrongfully ejected and ousted him therefrom, and unlawfully withheld from him the possession, and sought to recover the possession of the said land from the said defendants; and said defendants' answer denying all the allegations of the complaint in said action; and the plaintiffs in

this case claiming to be the owners of undevided interest in the aforesaid Bancho Punta de la Laguna, which adjoins the said rancho Gaudalupe, together with others their tenants in common, in consequence of such ownership, united with the defendants in the defence of the said action in the names of the said defendants; and the said Le Roy in said suit alleged his seizen and claimed to recover under and by virtue thereof; and the said plaintiffs herein, William Adam and J. L. Shuman, together with their co-owners in said rancho Punta de Laguna, but without becoming parties to the record by name, employed and paid counsel in said suit and defended said action for and in the names of
83 said defendants; and such proceedings were thereupon afterwards had in said cause, that said cause, by stipulation of parties in writing, duly filed therein, was tried by the court without a jury, and upon such trial it was found by the court in writing that said Le Roy was on the fourth day of November, A. D. 1873, seized in fee of and entitled to the possession of the premises described in the complaint therein, and that the defendants in that suit were in the wrongful possession of said premises; and said Le Roy upon said findings had judgment for the recovery of the possession of said premises, and upon a writ of execution issued to carry said judgment into effect, and not otherwise, the said Le Roy did, on or about the second day of June, 1876, enter into and upon and took possession of the whole of said premises, and ousted and ejected the plaintiffs herein; and those of the defendants in said suit who were then in possession, and those who had succeeded to the possession of the others, attorned to and became tenants of the said Le Roy; and they are the same persons who are the
84 defendants in this suit, except said Le Roy; and they do withhold the possession of the said land from the said plaintiffs under and by virtue of said judgement and said title of said Le Roy; and the defendants in this suit, except said Le Roy, are the same persons who were evicted under the writ of possession in that suit, and the said judgment in said suit is still in full force and unreversed.

XXVIII. The value of the lands in controversy is more than five thousand dollars.

XXIX. The plaintiffs in this action have shown no other title to the premises in question than that set forth in these findings.

Conclusions of law.

1. That the plaintiffs were not seized of the premises in question nor any part thereof at the time of the commencement of this action, or at any time afterward; and that they were not then and they are not now entitled to the possession thereof.

2. That the defendant Le Roy at the date of the commencement of this action was seized in fee of the premises in question, and he
85 has ever since continued to be seized in fee thereof, and that he and the other defendants named as his tenants at the date of the commencement of this action were, and they ever since have continued to be, in the rightful and lawful possession of said premises and every part thereof.

3. That defendants are entitled to judgment.

Let judgment be entered for the defendants, with costs.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Circuit.

Filed September 9th, 1878.

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *D'p'y Clk.*

86 *Judgment.*

In the circuit court of the United States of America of the ninth judicial circuit, in and for the district of California.

WILLIAM ADAM ET AL.
vs.
JOHN R. NORRIS ET AL. } No. 1841.

This cause having come on regularly for trial on the 8th day of April, A. D. 1878, being a day in the February term, A. D. 1878, of said court, before the court sitting without a jury, a trial by jury having been expressly waived by written stipulation of counsel for the respective parties hereto, duly filed with the clerk of the said court, T. E. Laine and S. F. Leib, esq's, appearing on behalf of plaintiff, and B. S. Brooks, esq., on behalf of defendants, and having on motion of plaintiffs' counsel been dismissed as to defendants John Doe, Richard Roe, John Styles, Richard Styles, John Den, and Richard Den, and the trial having been proceeded with on the 9th and 29th days of said April, and upon the 9th day of July, of said year, and witnesses on the part of the plaintiffs and of the defendants having been sworn and examined, and the evidence being closed, the cause after arguments of counsel having been submitted to the court for consideration and decision, and the court
87 after due deliberation having filed its findings in writing, and ordered that judgment be entered herein in accordance therewith:

Now, therefore, by virtue of the law and by reason of the premises, it is considered by the court that the plaintiffs take nothing by this action; that the defendants go hereof without , and that the said defendants recover from the said plaintiffs their costs in this behalf expended, taxed at one hundred twenty-nine $\frac{65}{100}$ dollars.

Judgment entered the 9th day of September, 1878.

L. S. B. SAWYER, *Clerk.*

I hereby certify that the foregoing is a full, true, and correct copy of an original judgment entered in the above entitled cause.

Attest my hand and the seal of said circuit court this 9th day of September, A. D. 1878.

L. S. B. SAWYER, *Clerk.*

Filed 9th September, 1878.

88 *Certificate to judgment roll.*

In the circuit court of the United States, ninth judicial circuit, in and for the district of California.

WM. ADAM ET AL.
vs.
JOHN R. NORRIS ET AL.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit, in and for the district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment roll in the above entitled cause.

Witness my hand and the seal of said circuit court this 9th day of September, A. D. 1878.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep'y Clk.*

(Endorsed :) Judgment roll. Filed 9th September, 1878.
L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *D'p'y Clk.*

89 *Bond on writ of error.*

In the Supreme Court of the United States.

WILLIAM ADAM ET AL.
v.
JOHN R. NORRIS ET AL.

Know all men by these presents that we, Samuel I. Jamison and Augustus B. Hunter, are held and firmly bound unto J. R. Norris, Van Robbins, James Triplett, A. J. Triplett, Calvin Drum, T. S. Brown, James Drum, Thomas Martin, John H. Rice, Thomas Gromley, T. B. Jamison, and Theodore Le Roy, defendants in error in the above entitled action, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said J. R. Norris, Van Robbins, James Triplett, A. J. Triplett, Calvin Drum, T. S. Brown, James Drum, Thomas Martin, John H. Rice, Thomas Gromley, T. B. Jamison, and Theodore Le Roy, their executors or administrators; to the payment of which sum well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated this the 16th day of September, A. D. 1878.

Whereas the above named William Adam and J. L. Schuman have prosecuted a writ of error to the Supreme Court of the United States of America to reverse the judgment rendered by the circuit court
90 of the United States for the district of California in the cause hereinabove entitled:

Now, therefore, the condition of this obligation is such that if the above named William Adam and J. L. Schuman, plaintiffs in error, shall prosecute their said writ of error to effect and answer all costs if they fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and virtue.

SAM'L I. JAMISON.
AUGUSTUS B. HUNTER.

Signed, sealed, and delivered in presence of—
T. H. LAINE.

UNITED STATES OF AMERICA,
District of California, ss:

Samuel I. Jamison and Augustus B. Hunter, being duly sworn, each for himself deposes and says that he is a householder in said district and is worth the sum of five hundred dollars, exclusive of property exempt from execution and over and above all debts and liabilities.

Subscribed and sworn to before me this 16th day of September, A. D. 1878.

[SEAL.] CHAS. F. WILCOX.
Notary Public in and for Santa Clara County, Cal'a.

91 (Endorsed:) I hereby approve the form of the within bond and the sufficiency of the sureties thereon.

Sept. 18, 1878.

(S'g'd) LORENZO SAWYER,
U. S. Circuit Judge.

Received and filed this 18th day of September, A. D. 1878.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep'y Clk.*

92 UNITED STATES OF AMERICA,
District of California, ss:

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit, within and for the district of California, do hereby certify that the foregoing ninety-one written pages, numbered from 1 to 91, both inclusive, are a full, true, and correct copy of the record and of all the proceedings in the therein entitled cause, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit court this 1st day of October, A. D. 1878.

[SEAL.]

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Dep'y Clk.*

(Indorsement on cover:) No. 266. William Adam and J. L. Schuman, plaintiffs in error, vs. J. R. Norris, Van Robbins, James Triplett, et al. California C. C. U. S. Filed 14th October, 1878.